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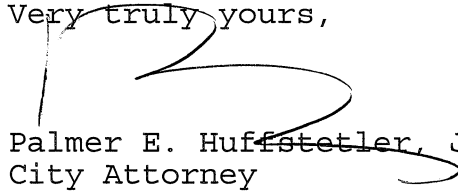
September 27, 2018

Susan L. Sitze
Staff Attorney
North Carolina General Assembly
Legislative Analysis Division
Suite 545, LOB
300 N Salisbury St
Raleigh NC 27603-5925

Dear Ms. Sitze:

In reference to your recent inquiry, all ordinances of the City of Cherryville are subject to criminal penalty.

Very truly yours,



Palmer E. Huffstetler, Jr.
City Attorney

CODE OF ORDINANCES

CITY OF

CHERRYVILLE, NORTH CAROLINA

PUBLISHED BY ORDER OF THE CITY COUNCIL

ADOPTED APRIL 6, 1998
AMENDED OCTOBER 6, 2003

ORDINANCE
TO AMEND THE
CITY CODE OF ORDINANCE BOOK

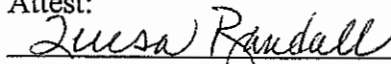
An Ordinance Adopting and Enacting the Amended Code for the City of Cherryville, North Carolina; Providing for the Repeal of Certain Ordinances Not Included Therein; Providing a Penalty for the Violation Thereof; Providing for the Manner of Amending Such Code; and Providing When Such Code and This Ordinance Shall Become Effective.

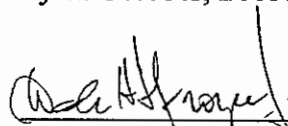
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHERRYVILLE, NORTH CAROLINA:

- Section 1. The Code entitled "Code of Ordinances, City of Cherryville, North Carolina," published by Municipal Code Corporation, consisting of Chapters 1 through 32, each inclusive, is adopted.
- Section 2. All ordinances of a general and permanent nature enacted on or before April 6, 1998, and not included in the Code or recognized and continued in force by reference therein, are repealed.
- Section 3. The repeal provided for in Section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.
- Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished in accordance with G.S. 14-4. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the city council may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.
- Section 5. Additions or amendments to the Code, when passed in the form as to indicate the intention of the city council to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.
- Section 6. Ordinances adopted after April 6, 1998, that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to like provisions of the Code.
- Section 7. This ordinance shall become effective October 6, 2003.

Passed and Adopted by the City Council this 6th day of October, 2003.

Attest:


Teresa Randall, City Clerk


Mayor Wade H. Stroupe, Jr.

OFFICIALS
of the
CITY OF
CHERRYVILLE, NORTH CAROLINA

AT THE TIME OF THE AMENDED CODE OF ORDINANCE
Adopted October 6, 2003

Wade Stroupe
Mayor

Wes Golden
Jerry Hudson
Frank Osborne
Nell Parker
City Council

David Hodgkins
City Manager

Palmer E. Huffstetler, Jr.
City Attorney

Teresa Randall
City Clerk

PREFACE

This Code constitutes a complete recodification of the general and permanent ordinances of the City of Cherryville, North Carolina.

Source materials used in the preparation of the Code were the 1973 Code, as supplemented, and ordinances subsequently adopted by the city council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1973 Code and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

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CHARTER COMPARATIVE TABLE	CHTCT:1
CODE	CDI:1
CODE APPENDIX	CDA:1
CODE COMPARATIVE TABLES	CCT:1
STATE LAW REFERENCE TABLE	SLT:1
CHARTER INDEX	CHTi:1
CODE INDEX	CDi:1

Indexes

The indexes have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the indexes themselves which stand as guideposts to direct the user to the particular item in which the user is interested.

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A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

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Teresa Randall
Teresa Randall, City Clerk

Wade H. Stroupe, Jr.
Mayor Wade H. Stroupe, Jr.

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PART I
CHARTER*

Article I. Incorporation and Corporate Powers

- Sec. 1.1. Incorporation and general powers.
- Sec. 1.2. Exercise of powers.
- Sec. 1.3. Enumerated powers not exclusive.
- Sec. 1.4. Form of government; certain general laws not applicable.

Article II. Corporate Boundaries and Wards

- Sec. 2.1. Existing boundaries.
- Sec. 2.2. Extension of boundaries.
- Sec. 2.3. Ward boundaries.
- Sec. 2.4. Alteration of ward boundaries.

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- Sec. 3.1. Composition of city council.
- Sec. 3.2. Mayor and mayor pro tempore.
- Sec. 3.3. Qualifications and terms of council members and mayor; vacancies in council and office of mayor.
- Sec. 3.4. Organization of council; oaths of office.
- Sec. 3.5. Meetings of council.
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- Sec. 4.3. Filing of candidates.
- Sec. 4.4. Names on ballots.
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Article V. City Manager

- Sec. 5.1. Appointment; compensation.
- Sec. 5.2. Chief administrator; powers.
- Sec. 5.3. Duties.

Article VI. City Attorney

- Sec. 6.1. Appointment; qualifications; term; compensation.
- Sec. 6.2. Duties.

* **Editors Note:** Printed herein is the Charter of the City of Cherryville being Session Laws 1969, chapter 581, as adopted by the legislature on May 23, 1969, and effective on the same date. Amendments to the original Charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original Charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.

Article VII. Administrative Officers and Employees

- Sec. 7.1. Appointment and duties of city clerk.
- Sec. 7.2. Appointment and duties of city treasurer.
- Sec. 7.3. Appointment and duties of city tax collector.
- Sec. 7.4. Appointment and duties of city accountant.
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Article VIII. Finance and Taxation

- Sec. 8.1. Custody, accrual of interest and disbursement of city money.
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Article IX. Disposal of Property

- Sec. 9.1. Surplus real property.
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- Sec. 11.1. Subdivision of land.
- Sec. 11.2. Enforcement of regulatory codes outside city limits.

Article XII. Claims Against the City

- Sec. 12.1. Presentation; suits; notice.
- Sec. 12.2. Settlement by city manager.

ARTICLE I. INCORPORATION AND CORPORATE POWERS*

Sec. 1.1. Incorporation and general powers.

The City of Cherryville, as originally incorporated by Chapter 101 of the Private Laws of 1832-33, shall continue to be a body politic and corporate under the name of the "City of Cherryville," and shall continue to be vested with all property and rights which now belong to the city; shall have perpetual succession; may have a common seal and alter and renew the same at pleasure; may sue and be sued; and may contract, may acquire and hold all such property, real and personal, as may be devised, bequeathed, sold or in any manner conveyed or dedicated to it, or otherwise acquired by it, and may from time to time hold or invest, sell, or dispose of the same; and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges, and immunities of every name and nature.

Sec. 1.2. Exercise of powers.

All powers, functions, rights, privileges, and immunities of the city, its officers, agencies, or employees, shall be carried into execution as provided by this Charter, or, if this Charter makes no provision, as provided by ordinance or resolution of the city council and as provided by the general laws of North Carolina pertaining to municipal corporations.

Sec. 1.3. Enumerated powers not exclusive.

The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the City of Cherryville shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina and all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate.

*State law reference-Corporate powers, G.S. 160A-11 et seq.

Sec. 1.4. Form of government; certain general laws not applicable.

The form of government of the City of Cherryville shall be the Council-Manager form, as specified in this Charter. None of the provisions of Part 4 of Article 22 of Chapter 160 of the General Statutes shall be applicable to the City of Cherryville.

Editors Note: Article 22 of Chapter 160 of the General Statutes was repealed by section 1 of Session Laws 1969, chapter 629.

ARTICLE II. CORPORATE BOUNDARIES AND WARDS*

Sec. 2.1. Existing boundaries.

The corporate boundaries of the City of Cherryville shall be as follows until changed in accordance with law: Beginning at a concrete marker, common corner of Luther Sisk and Carolina Subdivision (C.G. Beam) and runs thence the following calls and distances: S 63 deg. 04 min. E 280.0 feet; N 34 deg. E 377.0 feet; N 82 deg. 50 min. E 512.0 feet; N 64 deg. 20 min. E 559.0 feet crossing Tot Dellinger Road; S 8 deg. E 347.0 feet to a point in the northern margin of Roy Eaker Road; thence with the northern margin of Roy Eaker Road N 54 deg. E 350.0 feet to a stake; thence continuing with the northern margin of Roy Eaker Road N 50 deg. 55 min. E 947.0 feet to a stake; thence crossing Roy Eaker Road S 65 deg. E 3,036.0 feet to an old iron stake; thence crossing highway #150 S 27 deg. 54 min. W 811.0 feet to an iron pin in the center of the Seaboard Airline Railway track; thence with the center of said track S 70 deg. W 84.0 feet to an iron pin; thence S 9 deg. 43 min. E 230.0 feet to a point in the center of N.C. highway #277; thence with the center of said highway N 70 deg. E 8.7 feet; thence S 25 deg. E 230.0 feet; thence the following calls and distances: S 70 deg. W 1,340.0 feet; S 9 deg. 30 min. E 595.0 feet; N 85 deg. 30 min. W 250.0 feet; S 3 deg. W 271.0 feet; S 14 deg. E 937.0 feet; N 73 deg. 45 min. W 294.0 feet; S 3 deg. 30 min. W 576.0 feet; N 86 deg. 30 min. W 530.0 feet; N 74 deg. 50 min. W 143.0 feet; S 3 deg. 25 min. W 199.0 feet; S 2 deg. 15 min. E 1,372.0 feet; N 74 deg. W 152.0 feet; N 37 deg. W 850.0 feet; S 78 deg. 45 min. W 683.0 feet; S 38 deg. 44 min. E 589.0 feet; N 86 deg. 45 min. W 622.0 feet; S 3 deg. 02 min. W 900.0 feet,

*State law reference-Corporate limits, G.S. 160A-21 et seq.

more or less, to an iron stake in Beaver Dam Creek; thence with Beaver Dam Creek the following calls and distances: N 66 deg. 56 min. W 263.0 feet; N 84 deg. 35 min. W 200.0 feet; S 84 deg. 30 min. W 476.0 feet to an iron stake in the point of intersection of the center of Beaver Dam Creek with a small branch; thence with said branch in a generally northwestern direction 935.0 feet, more or less, to an iron stake in the old corporate limits line; thence with the old corporate limits line S 26 deg. 15 min. W 2,118.0 feet crossing highway #274 to an iron stake; thence the following calls and distances: N 70 deg. 45 min. W 1,228.0 feet; S 77 deg. 35 min. W 322.0 feet; N 40 deg. W 150.0 feet; N 15 deg. 30 min. W 24.2 feet; S 60 deg. 10 min. W 124.0 feet; S 25 deg. 30 min. E 190.0 feet; S 38 deg. 23 min. W 1,800.0 feet; N 83 deg. W 1,364.0 feet crossing Old Post Road to an iron stake; thence the following calls and distances: N 5 deg. 15 min. E 660.0 feet; S 86 deg. 45 min. W 476.0 feet; N 85 deg. W 515.0 feet; N 3 deg. 55 min. E 28.0 feet; N 84 deg. 35 min. W 1,461.0 feet; N 1 deg. 30 min. E 204.6 feet; S 85 deg. 30 min. W 720.5 feet; S 77 deg. W 2,008.0 feet to an old corner with Harry Carroll, control corner; thence N 10 deg. W 1,452.0 feet to an iron pin in the center of the Seaboard Airline Railway track; thence with the center of said track in a generally eastern direction 1,250.0 feet to an iron pin; thence N 20 deg. 12 min. W 466.0 feet to a point in the center of the pavement of N.C. highway #150; thence with the center of said highway in a generally eastern direction 516.0 feet to a point in the center of said highway; thence S 16 deg. 15 min. E 218.4 feet; N 72 deg. 01 min. E 200.0 feet; S 10 deg. 58 min. E 465.2 feet to an iron pin in the center of the Seaboard Airline Railway track; thence with the center of said track in a generally eastern direction 2,400.0 feet, more or less, to an iron pin; thence crossing N.C. highway #150 N 27 deg. 09 min. W 1,750.0 feet to an iron stake; thence the following calls and distances: N 55 deg. E 206.0 feet; N 69 deg. 30 min. E 1,693.0 feet; thence N 19 deg. 09 min. E 522.0 feet, crossing Delview Road to an iron stake; thence the following calls and distances: N 27 deg. 39 min. E 1,138.0 feet; S 82 deg. W 723.0 feet; due N 285.0 feet; N 84 deg. E 207.0 feet; N 6 deg. 30 min. W 247.0 feet; N 84 deg. 45 min. E 417.0 feet; N 6 deg. 30 min. W 625.0 feet; N 1 deg. E 196.0 feet; N 42 deg. E 249.0 feet to a point in N.C. highway #274; thence with said highway the following calls and distances: N 45 deg. 45 min. W 100.0 feet; N 43 deg. W 100.0 feet; N 40 deg. W 340.0 feet; thence leaving said highway S 81 deg. 30 min. E 600.0 feet; N 2 deg. 30 min. E 600.0 feet; S 86 deg. 24 min. E 307.0 feet; N 4 deg. 15 min. W 508.0 feet; S 76 deg. 50 min. E 675.0 feet; S 85 deg. 45 min. E 722.0 feet; N 13 deg. 10 min. E 1,036.0 feet;

thence S 80 deg. 15 min. E 632.0 feet crossing Requa Road to an iron stake; thence the following calls and distances: S 8 deg. W 240.0 feet; S 74 deg. 47 min. E 170.0 feet; N 18 deg. 39 min. E 943.0 feet; N 4 deg. 30 min. E 256.0 feet; S 86 deg. 30 min. E 374.0 feet to an iron stake in the center of a small branch; thence with said branch in a generally southern direction 1,552.0 feet to an iron stake, corner of W.T. Robinson; thence N 75 deg. W 801.0 feet; N 82 deg. W 313.0 feet; N 74 deg. 47 min. W 165.0 feet; S 8 deg. W 1,090.0 feet; N 87 deg. 50 min. E 142.0 feet; S 5 deg. W 265.0 feet; S 85 deg. E 2,284.0 feet; and S 4 deg. 43 min. W 150.0 feet to the beginning, containing 1,841.0 acres, more or less.

Editors Note: The boundaries of the city have been changed by subsequent annexations.

Sec. 2.2. Extension of boundaries.

All extensions of the corporate boundaries shall be governed by the General Statutes of North Carolina.

State Law References: Extension of corporate limits, G.S. 160A-24 et seq.

Sec. 2.3. Ward boundaries.

The city shall be divided into four wards, bounded as follows:

First ward. First ward shall be comprised of all territory within the section of the City which lies on both the south side of Church Street and on the east side of Pink Street. Included shall be all territory within the section of the City, which lies within all of the following: south of Carroll St., and Bills Ave., east of Mountain Street, and west of Pink Street.

Second ward. Second ward shall be comprised of all territory within the section of the City which lies on both the south side of Church Street and on the west side of Mountain Street. Included shall be all territory within the section of the City which lies within all of the following: south of Church Street, north of Carroll St. and Bills Ave., east of Mountain St., and west of Pink Street.

Third ward. Third ward shall be comprised of all territory within the section of the City which lies on both the north side of Church Street and on the west side of Mountain Street. Included shall be all territory within the section of the City which lies within all of the following: north of Church Street, south of Sixth Street, east of Mountain Street, and west of Pink Street.

Fourth ward. Fourth ward shall be comprised of all territory within the section of the City which lies on both the north side of Church Street and on the east side of Pink Street. Included shall be all territory within the section of the City which lies within all of the following: north of Sixth Street, east of Mountain Street, and west of Pink Street. (Amended 4-26-93)

Editors Note: A resolution adopted on April 26, 1993, amended the boundaries of the local electoral districts.

Sec. 2.4. Alteration of ward boundaries.

In addition to the power granted by G.S. 160-2(11), the city council shall have the power at any time to adjust or alter the boundaries of the several wards for the purpose of maintaining substantial equality of population among the wards. In the event any member of the city council shall become domiciled in a different ward as a result of adjustment or alteration of ward boundaries, he shall continue as a member from the ward which he was elected to represent until the expiration of the term for which he was elected. In the event any member of the city council shall move out of the limits of the ward from which he was elected, his office shall then become vacant and the same shall be filled as provided herein.

ARTICLE III.

MAYOR AND CITY COUNCIL*

* **State Law References:** Mayor and council, G.S. 160A-66 et seq.

Sec. 3.1. Composition of city council.

The city council shall consist of four members, one from each ward, to be elected by and from the qualified voters of the city voting at large in the manner provided in article IV.

Sec. 3.2. Mayor and mayor pro tempore.

The mayor shall be elected by and from the qualified voters of the city voting at large in the manner provided in article IV. The mayor shall be the official head of the city government and shall preside at all meetings of the city council. The mayor shall not have the power to vote on questions coming before the council except in case of a tie. The mayor shall exercise such powers and perform such duties as are or may be

conferred upon him by the General Laws of North Carolina, by this Charter, and by the ordinances of the city. The city council shall choose one of its number each year at its regular December meeting to act as mayor pro tempore, and he shall perform the duties of the mayor in the mayor's absence or disability. The mayor pro tempore may serve consecutive one-year terms at the pleasure of the remaining members of the council. (Amended 1-12-04)

Sec. 3.3. Qualifications and terms of councilmembers and mayor; vacancies in council and office of mayor.

(a) The members of the city council shall serve for terms of four years, and the mayor shall serve for a term of two years, beginning the day and hour of the organizational meeting following their election, as established by ordinance in accordance with this Charter; provided, they shall serve until their successors are elected and qualified.

(b) No person shall be eligible to be a candidate or be elected as mayor or as a member of the city council or to serve in such capacity, unless he is a resident and a qualified voter of the city, having resided within the city and in the ward from which he is elected for a period of twelve (12) months next preceding his election.

(c) In the event a vacancy occurs in the office of mayor, the council shall by majority vote appoint some qualified person to fill the same until the next election. Any vacancy in the office of councilman shall be filled by majority vote of the remaining members of the council until the next election.

Sec. 3.4. Organization of council; oaths of office.

The city council shall meet and organize for the transaction of business at a time established by ordinance, following each biennial election and prior to January 1. Before entering upon their offices, the mayor and each councilman shall take, subscribe, and have entered upon the minutes of the council the following oath of office:

I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully perform the duties of the office of _____, on which I am about to enter, according to my best skill and ability, so help me, God.

Sec. 3.5. Meetings of council.

(a) The city council shall fix suitable times for its regular meetings, which shall be as often as once monthly. Special meetings may be held on the call of the mayor or a majority of the council, and those not joining in the call shall be notified in writing. Any business may be transacted at a special meeting that might be transacted at a regular meeting.

(b) All meetings of the council shall be open to the public. The council shall not by executive session or otherwise formally consider or vote upon any question in private session.

State Law References: Meetings of council, G.S. 160A-71.

Sec. 3.6. Quorum; voting.

(a) A majority of the members elected to the city council shall constitute a quorum for the conduct of business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner as may be prescribed by ordinance.

(b) Three affirmative votes shall be necessary to adopt any ordinance, or any resolution or motion having the effect of an ordinance. All other matters to be voted upon shall be decided by a majority vote of those present and voting.

State Law References: Quorum, G.S. 160A-74.

Sec. 3.7. Ordinances and resolutions generally.

The adoption, amendment, repeal, pleading, or proving of ordinances shall be in accordance with the applicable provisions of the General Laws of North Carolina not inconsistent with this Charter. The yeas and nays shall be taken upon all ordinances and resolutions and entered upon the minutes of the council. The enacting clause of all ordinances shall be: "Be it ordained by the City Council of the City of Cherryville." All ordinances and resolutions shall take effect upon adoption unless otherwise provided therein.

ARTICLE IV.**ELECTION PROCEDURE***

* **State Law References:** Municipal elections, G.S. 163-279 et seq.

Sec. 4.1. Regular municipal elections; filling vacancies in council.

Regular municipal elections shall be held on Tuesday after the first Monday in November of each odd-numbered year. In each election year, there shall be elected by the qualified voters of the city voting at large a mayor to serve for a term of two years and two councilmen to serve for terms of four years, or until their successors are elected and qualified; provided, however, that if one or more vacancies shall have occurred during the first two years of a term, then a councilman shall be elected to fill the remaining two years of such term or terms.

Editors Note: G.S. 163-279 now provides that municipal elections be held in November.

Sec. 4.2. Voting; votes necessary for election.

Each voter shall be entitled to vote for one candidate for mayor and for as many candidates for councilman as there are offices to be filled. The candidate for mayor who receives the largest number of votes cast for mayor shall be declared elected. The two candidates for councilman who receive the largest number of votes cast for councilman shall be declared elected for terms of four years. If, by reason one or more vacancies to be filled at any election, more than two councilmen are elected, then all those elected except the two receiving the largest numbers of votes shall be declared elected for terms of two years.

State Law Reference-Municipal elections, G.S. 163-279 et seq.

Sec. 4.3. Filing of candidates.

Each qualified person who would offer himself as a candidate for the office of mayor or councilman shall file with the city clerk a statement giving notice of his candidacy. Such notice shall be filed not earlier than sixty (60) days nor later than five o'clock p.m. on the third Friday preceding the election at which he offers his candidacy, shall be accompanied by payment of a filing fee in an amount determined by the city council, and shall be substantially in the following form:

I, _____, do hereby give notice that I am a candidate for election to the office of _____, to be voted on at the election to be held on _____, and I hereby request that my name be placed on the official ballot for such office. I also certify that I am a resident and qualified voter of the City of Cherryville, residing at _____,

Witness: _____ (Signature)
 _____ (Date)

Editors Note: By agreement with Gaston County on May 8, 1989, the county board of elections conducts city elections.

Sec. 4.4. Names on ballots.

No names other than those of candidates who have properly filed notice as herein required shall be printed upon the ballots for any municipal election.

Sec. 4.5. Regulation of elections.

All municipal elections shall be conducted in accordance with the General Laws of North Carolina relating to municipal elections, except as otherwise herein provided.

Sec. 4.6. Absentee voting.

Absentee voting shall be allowed in the City of Cherryville if city elections are conducted by a municipal board of elections, and any references in G.S. 163-302 that refer to the county board of elections shall, for the City of Cherryville, refer to the municipal board of elections if city elections are conducted by a municipal board of elections. The state board of elections may adopt rules to regulate this section. (Sess. Laws 1984, ch. 935, § 1)

ARTICLE V.

CITY MANAGER*

* **State Law References:** Powers and duties of manager, G.S. 160A-148.

Sec. 5.1. Appointment; compensation.

The city council shall appoint an officer whose title shall be city manager and who shall be the chief executive officer of the city and the head of the administrative branch of the city government. The city manager shall be chosen by the council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or knowledge of, accepted practice in respect to the duties of his office as hereinafter prescribed. At the time of his appointment he need not be a resident of the city, but

shall reside therein during his tenure of office. No person elected as mayor or as a member of the city council shall be eligible for appointment as city manager until one year shall have elapsed following the expiration of the term for which he was elected. The city manager shall serve at the pleasure of the council and shall receive such salary as the council shall fix. In case of absence or disability of the city manager, the council may designate a qualified administrative officer of the city to perform the duties of the manager during such absence or disability.

Sec. 5.2. Chief administrator; powers.

The city manager shall be responsible to the city council for the proper administration of all the affairs of the city. As chief administrator, the city manager shall have the power to appoint and remove all officers, department heads and employees in the administrative service of the city, except the city attorney, who shall be appointed as provided in article VI. Neither the mayor nor the city council nor any of its committees or members shall direct or request the appointment of any person to, or his removal from, office by the city manager, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the city. Except for the purpose of inquiry, the mayor and the city council and its members shall deal with officers and employees in the administrative service only through the city manager, and neither the mayor nor the city council nor any of its members shall give orders or directions to any subordinate of the city manager, either publicly or privately.

Sec. 5.3. Duties.

It shall be the duty of the city manager to supervise the administration of the affairs of the city; to see that the ordinances, resolutions and regulations of the city council and the laws of the state are faithfully executed and enforced; to make such recommendations to the city council concerning the affairs of the city as he shall deem expedient; to keep the city council advised of the financial condition and the future financial needs of the city; to attend all meetings of the city council and to prepare and submit to it such reports as he may deem expedient or as may be required of him by the council, and to perform all other duties as may be required of him by the city council.

ARTICLE VI.**CITY ATTORNEY***

* **State Law References:** City attorney, G.S. 160A-173.

Sec. 6.1. Appointment; qualifications; term; compensation.

The city council shall appoint a city attorney who shall be an attorney at law licensed to engage in the practice of law in North Carolina and who need not be a resident of the city during his tenure. The city attorney shall serve at the pleasure of the council and shall receive such compensation as the council shall determine.

Sec. 6.2. Duties.

It shall be the duty of the city attorney to prosecute and defend suits for and against the city; to advise the mayor, city council, city manager and other city officials with respect to the affairs of the city; to draw all legal documents relating to the affairs of the city; to draw proposed ordinances when requested to do so; to inspect and pass upon all agreements, contracts, franchises and other instruments with which the city may be concerned; to attend all meetings of the city council; and to perform such other duties as may be required of him by virtue of his position as city attorney.

ARTICLE VII.**ADMINISTRATIVE OFFICERS AND EMPLOYEES****Sec. 7.1. Appointment and duties of city clerk.**

The city manager may appoint a city clerk to keep a journal of the proceedings of the city council and to maintain in a safe place all records and documents pertaining to the affairs of the city, and to perform such other duties as may be required by law or as the city manager may direct.

Sec. 7.2. Appointment and duties of the finance director

The city manager may appoint the finance director to be the custodian of all moneys of the city and shall keep and preserve the same in such place or places

as shall be determined by the city council. He shall countersign all vouchers issued by the city accountant and shall pay out money only on such vouchers. In addition, he shall perform all other duties as may be prescribed by law or assigned to him by the city manager.

Sec. 7.3. Appointment and duties of city tax collector.

The city manager may appoint a tax collector to collect all taxes, licenses, fees and other moneys belonging to the city, subject to the provisions of this Charter and the ordinances of the city, and he shall diligently comply with and enforce all the General Laws of North Carolina relating to the collection, sale and foreclosure of taxes by municipalities.

Sec. 7.4. Appointment and duties of city accountant.

The city manager may appoint a city accountant to perform the duties of the accountant as required by the Municipal Fiscal Control Act.

Sec. 7.5. Consolidation of positions and functions.

The city manager may, with the approval of the city council, consolidate any two or more of the positions of city clerk, city treasurer, city tax collector, and city accountant, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions. The city manager may also, with the approval of the city council, himself perform all or any part of the functions of any of the named offices, in lieu of appointment of other persons to perform the same.

ARTICLE VIII.**FINANCE AND TAXATION***

* **State Law References:** Municipal taxation, G.S. 160A-206--160A-214.

Sec. 8.1. Custody, accrual of interest and disbursement of city money.

All moneys received by the city for or in connection with the business of the city government shall be paid promptly into the city depository. Such institution shall be subject to such requirements as to security for deposits and interest thereon as may be established by the General Statutes of North Carolina.

All interest on moneys belonging to the city shall accrue to the benefit of the city. All moneys belonging to the city shall be disbursed only in accordance with the provisions of the Municipal Fiscal Control Act.

Sec. 8.2. Independent audit of city books and accounts.

As soon as practicable after the close of each fiscal year, an independent audit shall be made of all books and accounts of the city government by a certified public accountant or a qualified public accountant registered under Chapter 93 of the General Statutes of North Carolina, who shall have no personal interest directly or indirectly in the affairs of the city or of any of its officers. The city council shall select the public accountant, and the results of such audit shall be made available for inspection by any interested citizen of the city, and may be published if so ordered by the city council.

ARTICLE IX.

DISPOSAL OF PROPERTY*

* **State Law References:** Sale and disposition of property, G.S. 160A-265 et seq.

Sec. 9.1. Surplus real property.

Subject to the provisions of subsection (c) of this section, the mayor and city council shall have power, in addition to the power granted by G.S. 160-59, by their unanimous vote to dispose of any real property which the council has declared to be surplus, in the following manner:

Editors Note: G.S. 160-59 was repealed by section 2 of Session Laws 1971, chapter 698. See now G.S. 160A-266.

- (a) Without bids or advertisement, at private sale, if the property has a market value of not more than two thousand dollars (\$2,000.00); or at public auction, if so determined by the city council.
- (b) Without bids or advertisement, by exchange for real property of like or greater market value.
- (c) No sale or exchange of real property

authorized by this section shall be ordered by the mayor and city council unless they shall have caused to be published at least once in each of the two calendar weeks immediately preceding the vote authorizing such sale in a newspaper having general circulation in the city a notice of their intention to consider such sale or exchange.

Sec. 9.2. Surplus personal property.

The city council shall have power to dispose of surplus property consistent with G.S. 160A-266.

Editors Note: G.S. 160-59 was repealed by section 2 of Session Laws, chapter 698. See now G.S. 160A-266.

the minutes of the council; or at public auction, if so determined by the city council.

ARTICLE X.

POLICE*

* **State Law References:** Law enforcement, G.S. 160A-281 et seq.

Sec. 10.1. Jurisdiction.

(a) The jurisdiction of the police force is hereby extended to include all territory outside and within one mile of the corporate limits, and all members of the police force shall have within such territory all rights, power and authority as they have within the corporate limits.

(b) The jurisdiction of the police force is hereby extended to include all city owned property and facilities whether located within or outside the corporate limits, and all members of the police force shall have upon and within such property and facilities all rights, power and authority as they have within the corporate limits.

§ 10.1

Sec. 10.2. Service of process.

Every police officer of the city shall have power to execute, anywhere within Gaston County, any writ,

precept, or process, either civil or criminal, which shall be directed to him or to the chief of police by any court of the state.

Sec. 10.3. Residence.

No person shall be eligible to be a candidate for employment as a police officer, or to continue as such, unless he is a resident of the city or unless he agrees to become a resident of the city upon his employment.

Editors Note: This provision has been changed inasmuch as a police officer is presently required to live within five miles of the city limits.

Sec. 10.4. Effect of ordinance on city property.

All applicable ordinances of the city shall have full force and effect upon and within all property and facilities owned by the city, whether located within or outside the corporate limits.

ARTICLE XI.

REGULATORY POWERS

Sec. 11.1. Subdivision of land.

Notwithstanding the provisions of G.S. 160-227.1, the city council is hereby authorized to adopt an ordinance regulating the subdivision of land in accordance with the provisions of G.S. 160-226 through 160-227, inclusive. Such ordinance may also provide for the more orderly development of subdivisions by requiring the construction of community service facilities, including water lines; sewer lines; street paving, curbing, and guttering; and street and storm drainage facilities in accordance with city standards and specifications and to assure compliance with such requirement, the ordinance may require the posting of bond or such other method as will offer guarantee of compliance.

Editors Note: G.S. 160-227.1 was repealed by section 6 of Session Laws 1969, chapter 1010. G.S. 160-226 through 160-227 were repealed by section 2 of Session Laws 1971, chapter 698. See now G.S. 160A-371 to 160A-376.

Sec. 11.2. Enforcement of regulatory codes outside city limits.

The city council is hereby authorized to make effective and to enforce within the territory lying outside the corporate limits and within one mile thereof all

ordinances and codes of the city regulating the construction and repair of buildings, including building codes, plumbing codes, electrical codes, heating and air conditioning codes, fire prevention codes, minimum housing codes adopted pursuant to article 15 of Chapter 160 of the General Statutes, and ordinances adopted pursuant to G.S. 160-200(28) relating to unsafe buildings. In addition, the city council is hereby authorized to enforce in such area the North Carolina State Building Code, the North Carolina State Plumbing Code, and the North Carolina Uniform Residential Building Code, all as published by the North Carolina Building Code Council. Such enforcement powers shall include the power to require that prior to the beginning of any construction, reconstruction, or alteration of any building or structure or any part or system thereof within such area, the appropriate permit or permits be obtained from the city; provided, that the city council may by ordinance require that the contractor or other person charged with such construction, reconstruction, or alteration secure such permit or permits, rather than requiring the owner of the property to do so.

Editors Note: Article 15 of chapter 160 of the General Statutes was repealed by section 2 of Session Laws 1971, chapter 698. See now G.S. 160A-441 to 160A-450. G.S. 160-200(8) was repealed by section 2 of Session Laws 1971, chapter 698. See now G.S. 160A-443.

ARTICLE XII.

CLAIMS AGAINST THE CITY

Sec. 12.1. Presentation; suits; notice.

(a) All claims or demands against the City of Cherryville arising in tort or in contract shall be presented to the city council in writing, signed by the claimant, his attorney or agent, within ninety days after the claim or demand is due or the cause of action accrues, and no suit or action shall be brought thereon within thirty days or after the expiration of twelve months from the time said claim or demand is so presented. Unless the claim or demand is so presented within ninety days after the cause of action accrues, and unless suit is brought within twelve months thereafter, any action thereon is barred.

(b) No action shall be instituted against the city on account of damages to or compensation for real property taken or used by the city for any public purpose, or for the ejectment of the city therefrom, or to remove a cloud upon the title thereof, unless, within two years

after such alleged use, the owner, his executor, administrator, guardian, or next of friend, [sic] shall have given notice in writing to the city council of the claim, stating in the notice the date that the alleged use commenced, a description of property alleged to have been used, and the amount of the damage or compensation claimed.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if a complainant suffers from physical or mental incapacity that renders it impossible for him to give notice, his action shall not be barred if notice of claim is given by him or on his behalf within six months after the termination of his incapacity; provided, that minority shall not of itself constitute physical or mental incapacity. If the complainant is a minor, his action shall not be barred if notice of claim is given on his behalf within three years after the happening or the infliction of the injury complained of; or, if the minor suffers from physical or mental incapacity that renders it impossible for him to give notice, his action shall not be barred if notice of claim is given on his behalf within six months after termination of the incapacity, or within three years after the happening or the infliction of the injury complained of, whichever is the longer period. The city may at any time request the appointment of a next friend [sic] to represent any person having a potential claim against the city and known to be suffering from physical or mental incapacity.

Sec. 12.2. Settlement by city manager.

The city manager may with the approval of the city council, settle claims against the city for (1) personal injuries or damages to property when the amount involved does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expense actually incurred and (2) the taking of small portions of private property which are needed for the rounding of corners at intersections of streets; when the amount involved in any such settlement does not exceed five hundred dollars (\$500.00) and does not exceed the actual loss sustained. Settlement of a claim by the city manager pursuant to this section shall constitute a complete release of the city from any and all damages sustained by the person involved in such settlement in any manner arising out of the accident, occasion, or taking complained of. All such settlements, and all such releases, shall be approved in advance by the city attorney.

PART II
CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

- Sec. 1-1. How Code designated and cited.
- Sec. 1-2. Definitions and rules of construction.
- Sec. 1-3. Provisions considered as continuations of existing ordinances.
- Sec. 1-4. Catchlines of sections; history notes, editor's notes and references.
- Sec. 1-5. Effect of repeal of ordinances.
- Sec. 1-6. Certain ordinances not affected by Code.
- Sec. 1-7. Code does not affect prior offenses, rights, etc.
- Sec. 1-8. Amendments to Code.
- Sec. 1-9. Supplementation of Code.
- Sec. 1-10. Severability of parts of Code.
- Sec. 1-11. General penalty; enforcement of ordinances; continuing violations.

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

The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Code of Ordinances, City of Cherryville, North Carolina" and may be so cited. Such Code may also be cited as "Cherryville City Code."

(Code 1973, § 1-1)

State Law References: Authority to adopt code of ordinances, G.S. 160A-77.

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

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

Charter. The word "Charter" shall mean the Charter of the City of Cherryville as printed in Part I of this volume.

City. The words "the city" shall mean the City of Cherryville, in the County of Gaston in the State of North Carolina, except as otherwise provided.

City council or council. The phrase "city council" or "council" shall mean the governing body of the City of Cherryville, North Carolina.

Code. Whenever the word "Code" is used it shall mean the Code of Ordinances, City of Cherryville, North Carolina as designated in section 1-1.

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

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

Delegation of authority. Whenever a provision of this Code requires or authorizes an officer or employee of the city to do some act or perform some duty, it shall be construed to authorize the officer or employee to designate, delegate and authorize subordinates to perform the act or duty unless the terms of the provision designate otherwise.

Gender. Words importing the masculine gender shall

include the feminine and neuter.

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

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

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

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

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

Official time standard. Whenever certain hours are named in this Code, they shall mean standard time or daylight saving time, as may be in current use in this city.

Officials, departments, boards, commissions, etc. Whenever reference is made to officials, departments, boards, commissions, committees and the like, by title only, they shall be construed as if followed by the words "of Cherryville, North Carolina."

Or, and. The word "or" may be read "and" and "and" may be read "or" if the sense requires it.

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

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

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

Plural, singular. Words used in the singular shall include the plural and the plural shall include the singular number.

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

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

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

Shall; may. The word "shall" is mandatory; and the word "may" is permissive.

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

Signature or subscription. The word "signature" or "subscription" shall include a mark when the person cannot write.

State. The word "state" shall be construed to mean the State of North Carolina, except as otherwise provided.

Statute references. Whenever reference is made to G.S., it shall be construed to refer to the latest edition or supplement of the General Statutes of North Carolina.

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

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

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

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

Year. The word "year" shall mean a calendar year. (Code 1973, § 1-2)

State Law References: Computation of time, G.S. 1-593; similar definitions and rules of statutory construction, G.S. 12-3.

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

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

(Code 1973, § 1-3)

Sec. 1-4. Catchlines of sections; history notes, editor's notes and references.

(a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections nor as any part thereof, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

(b) The history notes appearing after sections of the Code and the references and editor's notes scattered throughout the Code are not intended to have any legal effect, but are merely intended to assist the user of the Code.

(Code 1973, § 1-4)

Sec. 1-5. Effect of repeal of ordinances.

(a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

Sec. 1-6. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following when not inconsistent with this Code:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.
- (2) Any ordinance promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness.
- (3) Any contract or obligation assumed by the city.
- (4) Any right or franchise granted by the city.
- (5) Any ordinance dedicating, naming, establishing, locating, opening, paving, widening, vacating, etc., any street or public way in the city.
- (6) Any ordinance establishing or prescribing grades for streets in the city.
- (7) Any appropriation ordinance or ordinances providing for the levy of taxes or for adopting an annual budget.
- (8) Any ordinance relating to local improvements and assessments therefor.
- (9) Any ordinance annexing territory to the city or discontinuing territory as a part of the city or amending the boundaries of the city.
- (10) Any ordinance regulating subdivision of land or dedicating or accepting any plat or subdivision in the city.
- (11) Any ordinance or resolution establishing or amending personnel rules or regulations.
- (12) Any ordinance or resolution prescribing any utility or other rates, charges or fees.
- (13) Any ordinance prescribing traffic regulations for specific streets, such as ordinances establishing speed limits or designating one-way streets, no parking areas, truck routes, stop intersections, intersections where traffic is to be controlled by signals, etc.
- (14) Any ordinance establishing or amending zoning or land use regulations or the zoning map or rezoning property.
- (15) Any ordinance calling elections or prescribing the manner of conducting the election in accordance with state law.
- (16) Any ordinance prescribing any fee or payment of money to the city for licenses or any other fee or tax.
- (17) Any ordinance prescribing the number, classification, benefits or compensation of any city officers or employees, not inconsistent herewith.
- (18) Any ordinance which is temporary although general in effect.
- (19) Any ordinance which is special although permanent in effect.
- (20) Any ordinance containing any administrative provisions.
- All such ordinances shall remain in effect and are on file in the city clerk's office.
- Sec. 1-7. Code does not affect prior offenses, rights, etc.**
- (a) Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code.
- (b) The adoption of this Code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance of the city in effect on the date of adoption of this Code.

Sec. 1-8. Amendments to Code.

(a) If the city council shall desire to amend any existing article or section of this Code, such article or section shall be specifically repealed and a new article or section, containing the desired amendment, substituted in its place.

(b) Any ordinance which is proposed to add to the existing Code a new chapter, article or section shall indicate, with reference to the arrangement of this Code, the proper number of such chapter, article or section. In addition to such indication thereof as may be contained in the text of such proposed ordinance, such indication shall be shown in concise form above the ordinance.

(Code 1973, §§ 1-7, 1-8)

State Law References: Authority to revise and codify ordinances, G.S. 160A-77.

Sec. 1-9. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
- (2) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections

_____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

- (3) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-10. Severability of parts of Code.

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

(Code 1973, § 1-5)

Sec. 1-11. General penalty; enforcement of ordinances; continuing violations.

(a) Unless otherwise specifically provided, violation of any provision of this Code or any other city ordinance shall be a misdemeanor, as provided by G.S. 14-4.

(b) Violation of any provision of this Code or any other city ordinance shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within a period of time prescribed by the court after he has been cited for such violation.

(c) Any provision of this Code or any other city ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city

for equitable relief that there is an adequate remedy at

(d) Any provision of this Code or any other city ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the city may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

- (1) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this Code or such ordinance.
- (2) If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the city may execute the order of abatement.
- (3) The city shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien.
- (4) The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order.

The bond shall be given with sureties approved by the clerk of superior court in an amount

approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(e) The provisions of this Code and any other city ordinance may be enforced by any one, all or a combination of the remedies authorized and prescribed by this section.

(f) Except as otherwise specifically provided, each day's continuing violation of any provision of this Code or any other city ordinance shall be a separate and distinct offense.

(g) Violations of the Code of Ordinances of the City of Cherryville shall be punishable by fines as set forth in a schedule adopted by the City Council of the City of Cherryville, said schedule incorporated herein by reference. The following penalties are hereby established by the City Council for the City of Cherryville:

Warning Citation	(Correct violation within a specific time period)

First Citation	\$25.00

Second Citation (for same offense)	\$50.00

Third and Subsequent Citations for same offense (Code 1973, § 1-6) (Amended 05-08-00)	\$50.00 for each day

State Law References: Violation of local ordinances misdemeanor, G.S. 14-4; enforcement of ordinances, penalty, G.S. 160A-175.

Chapter 2

ADMINISTRATION*

Article I. In General

- Sec. 2-1. Extraterritorial jurisdiction for zoning, planning and subdivision of land.
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Article II. Mayor and City Council

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Sec. 2-38. Oaths of mayor and councilmembers.
Sec. 2-39. Duties of mayor.
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Division 2. Meetings

- Sec. 2-61. Time and place of regular meetings.
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Article III. Officers and Employees

- Sec. 2-86. Compensation of city officials and employees; bond and oath of city officials and employees.
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Article IV. Boards, Commissions and Committees

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- Secs. 2-111—2-130. Reserved.

Division 2. Planning and Zoning Commission

- Sec. 2-131. Composition.
Sec. 2-132. Appointment of members.
Sec. 2-133. Terms of members; filling of vacancies; qualifications; compensation of members.
Sec. 2-134. Election and terms of officers.
Sec. 2-135. Removal of members.
Sec. 2-136. Meetings; adoption of rules for business; records; absenteeism.
Sec. 2-137. Functions and duties; jurisdiction.
Sec. 2-138. Power of commission.
Sec. 2-139. Authority to appoint employees, make contracts or expend funds.
Sec. 2-140. Acceptance and use of gifts and donations.
Sec. 2-141. Standards for preparation of master plan and zoning districts.
Sec. 2-142. Adoption of master plan; assistance of city officers and employees.

*Cross references—Cemeteries, ch. 12; taxation and finance, ch. 26.

Sec. 2-137. Functions and duties; jurisdiction.
 Sec. 2-138. Power of commission.
 Sec. 2-140. Acceptance and use of gifts and donations.
 Sec. 2-141. Standards for preparation of master plan and zoning districts.
 Sec. 2-142. Adoption of master plan; assistance of city officers and employees.
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Division 3. Gaston County Historic Properties Commission

Sec. 2-166. Purpose.
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Division 4. Downtown Architectural Review Board

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ARTICLE I. IN GENERAL

Sec. 2-1. Extraterritorial jurisdiction for zoning, planning and subdivision of land.

(a) The city hereby establishes boundaries for the extraterritorial enforcement of the provisions of this Code and other ordinances of the city concerning zoning, subdivision of land and the municipal planning board.

(b) Such boundaries are delineated on the face of a map entitled: "Extraterritorial Jurisdiction of the City of Cherryville," which is hereby adopted by reference and on file in the community development office.

(Code 1973, § 2-4; Ord. of 11-14-88)

Editor's note—In ordinances adopted November 14, 1988, and September 10, 1990, the city amended and redefined boundaries for the extraterritorial jurisdiction of the zoning ordinance, the subdivision regulations and ordinances creating the planning and zoning commission and the board of zoning adjustment. Such amended and redefined boundaries are described in that ordinance, which has not been set out herein, but which may be found on file in the community development office. Such boundaries are also delineated on a map entitled "Amended Extraterritorial Jurisdiction Boundary Line, of the City of Cherryville, N.C.," which is incorporated in the ordinance of November 14, 1988, by reference, and a copy of which may also be found on file in the community development office.

State law reference—Extraterritorial jurisdiction, G.S. 160A-360 et seq.

Secs. 2-2—2-35. Reserved.

ARTICLE II. MAYOR AND CITY COUNCIL

DIVISION 1. GENERALLY

Sec. 2-36. Residency requirement for holders of public offices.

No person shall hold any public office unless he shall be a qualified voter of the city.

(Code 1973, § 2-1)

Charter reference—Residency requirements, §§ 3.3, 5.1, 6.1, 10.3.

State law references—Qualifications for elective office, G.S. 160A-59; qualifications for appointive office, G.S. 160A-60.

Sec. 2-37. Composition of governing body.

The governing body of the city shall consist of a mayor and four councilmembers.

(Code 1973, § 2-5)

Charter reference—Composition of city council, § 3.1.

State law reference—Composition of council, G.S. 160A-66.

Sec. 2-38. Oaths of mayor and councilmembers.

The mayor and each member of the city council shall take the oath prescribed by the constitution of the state.

(Code 1973, § 2-2)

Charter reference—Oath of office, § 3.4.

State law reference—Oath of office, N.C. Const. art. VI, § 7, G.S. 160A-61.

Sec. 2-39. Duties of mayor.

It shall be the duty of the mayor:

- (1) To preside over the meetings of the city council.
- (2) To appoint various committees.
- (3) To sign, with the clerk and treasurer, all warrants or orders for the payment of public funds.

(Code 1973, § 2-6)

Charter reference—Duties of mayor, § 3.2.

State law reference—General powers of mayor, G.S. 160A-67.

Sec. 2-40. Duties of councilmembers.

The councilmembers' duties and powers are such as are set out by the General Statutes of North Carolina and by the charter of the city.

(Code 1973, § 2-7)

Charter reference—Powers and duties of councilmembers, §§ 3.2 et seq., 5.1 et seq., 6.1, 6.2, 8.1, 8.2, 9.1, 9.2, 11.1, 11.2, 12.1, 12.2.

State law reference—General powers of council, G.S. 160A-67.

Secs. 2-41—2-60. Reserved.

DIVISION 2. MEETINGS*

Sec. 2-61. Time and place of regular meetings.

The regular time and place of meetings of the mayor and city council shall be on the second Monday of each month at 7:00 p.m. at such place as they designate.

(Code 1973, § 2-10)

***Charter reference**—Meetings of council, § 3.5.

State law reference—Regular meetings, G.S. 160A-71.

Sec. 2-62. Adjournment upon failure to have quorum or complete business.

If a quorum shall fail to attend any regular or special meeting of the city council, or if for any reason such meeting shall fail to complete transaction of the business before the meeting, such meeting may be adjourned to any date prior to the next regular meeting agreed upon by a majority of the members present.

(Code 1973, § 2-13)

Charter references—Meetings of council, § 3.5; quorum, § 3.6.

State law references—Recessed and adjourned meetings, G.S. 160A-71; quorum, G.S. 160A-74.

Sec. 2-63. Rules of procedure.

Robert's Rules of Order, current edition, is hereby adopted as the rules of procedure for the city.

(Code 1973, § 2-14)

State law references—Rules of procedure, G.S. 160A-71; quorum, G.S. 160A-74.

Secs. 2-64—2-85. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

Sec. 2-86. Compensation of city officials and employees; bond and oath of city officials and employees.

It shall be the duty of the city council to pay such compensation, to require such bond and oath, of all city officials and employees, as they may designate; provided, that such compensation, bond or oath is not fixed by state law or the charter.

(Code 1973, § 2-8)

Charter reference—Oath of office, § 3.4.

State law references—Oath of office, N.C. Const. art. VI, § 7, G.S. 160A-61; compensation of mayor and council, G.S. 160A-64; compensation of city personnel, G.S. 160A-162.

Secs. 2-87—2-110. Reserved.

*Cross reference—Law enforcement, ch. 18.

ARTICLE IV. BOARDS, COMMISSIONS AND COMMITTEES

DIVISION 1. GENERALLY

Secs. 2-111—2-130. Reserved.

DIVISION 2. PLANNING AND ZONING COMMISSION†

Sec. 2-131. Composition.

The planning and zoning commission shall consist of seven members; three of whom shall be residents of the city; three members shall be residents of that area which is within one mile outside the corporate limits of the city; and the city manager who shall serve as ex officio member and shall be the secretary and treasurer of the commission.

(Code 1973, § 2-15)

Charter reference—Extension of corporate boundaries, § 2.2.

State law references—Qualifications for appointive office, G.S. 160A-60; extraterritorial jurisdiction, G.S. 160A-360; extraterritorial representation, G.S. 160A-362.

Sec. 2-132. Appointment of members.

Three members of the planning and zoning commission for that area within one mile of the corporate limits of the city shall be appointed by the board of county commissioners of the county; three members of the planning and zoning commission for that area within the corporate limits of the city shall be appointed by the mayor and approved by the city council members.

(Code 1973, § 2-16)

Charter reference—Extension of corporate boundaries, § 2.2.

State law references—Qualifications for appointive office, G.S. 160A-60; extraterritorial jurisdiction, G.S. 160A-360; extraterritorial representation, G.S. 160A-362.

†State law reference—Planning and regulation of development, G.S. 160A-360 et seq.

Sec. 2-133. Terms of members; filling of vacancies; qualifications; compensation of members.

(a) Each member of the planning and zoning commission shall be appointed for a term of three years. The original appointments shall be made in the following manner:

- (1) Two members for a term of three years;
- (2) Two members for a term of two years;
- (3) Two members for a term of one year each;

with terms to be divided evenly among the city and county members in order that one member from the county area and one from the city will be appointed or reappointed each year. At the expiration of the terms of all members first appointed, all new or reappointed members shall be for a full term of three years. Vacancies occurring otherwise shall be filled for the unexpired term and shall be made by the mayor of the city with the approval of the council.

(b) The members of the planning and zoning commission shall be persons of recognized experience and qualifications and shall hold no other official position except on the board of adjustment or on a housing authority board.

(c) All members of the planning and zoning commission shall serve as such without compensation.

(Code 1973, § 2-17)

State law reference—Extraterritorial representation, G.S. 160A-362.

Sec. 2-134. Election and terms of officers.

(a) The planning and zoning commission shall elect a chairperson, vice-chairperson and such other officials as may be necessary from among its members to serve for a period of one year with eligibility for reelection.

(b) The planning and zoning commission shall hold a meeting for the election of officers at the first meeting in July of every year.

(Code 1973, § 2-18)

Sec. 2-135. Removal of members.

Members may, after public hearing, be removed from the planning and zoning commission

by the mayor for inefficiency, neglect of duty or malfeasance in office. The mayor shall file a written statement of reasons for such removal with the city council prior to such removal.
(Code 1973, § 2-19)

Sec. 2-136. Meetings; adoption of rules for business; records; absenteeism.

(a) The planning and zoning commission shall hold at least one meeting monthly, which shall be held at the city hall and shall be open for public attendance. Such commission shall adopt rules and regulations for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which shall be open to the public for viewing.

(b) The membership of any member of the planning and zoning commission who is absent from four consecutive meetings or whose percent of attendance over any period of 12 consecutive months is less than 60 percent, shall automatically be terminated, unless such absence is excused by the full commission for good and sufficient cause.

(Code 1973, § 2-20)

State law references—Public records defined, G.S. 132-1; inspection and examination of records, G.S. 132-6; access to records, G.S. 132-9.

Sec. 2-137. Functions and duties; jurisdiction.

(a) It shall be the function and duty of the planning and zoning commission to make and adopt a master plan for the physical development of the city and to establish zoning districts for the control of the development of the plan, within the city and the area within one mile of the corporate limits of the city.

(b) Such plan with accompanying maps, plats, charts and descriptive matter shall show the commission's recommendations for the development of such territory including, among other things, the general location, character and extent of streets, bridges, waterways, parks, playgrounds, boulevards, parkways and other public ways, grounds and open spaces, the general location of public buildings and other public property and the general location and extent of public utilities

and facilities, whether publicly or privately owned or operated, for water, light, sanitation, gas, transportation, communication, power and other purposes; also the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities or facilities as well as a zoning plan for the control of the height, area, bulk, location and use of buildings and premises.

(c) The commission may, from time to time, amend, extend, or add to the plan or zoning districts.

(Code 1973, § 2-21)

State law reference—Functions of planning and zoning commission, G.S. 160A-361.

Sec. 2-138. Power of commission.

The planning and zoning commission shall act only as an advisory commission and shall have no police powers as such and any master development plan or zoning districts created by such shall have no meaning until adopted by the city council in accordance with G.S. 160A-387.
(Code 1973, § 2-22)

Sec. 2-139. Authority to appoint employees, make contracts or expend funds.

The planning and zoning commission may appoint such employees as it may deem necessary to carry on its work. The commission may also contract with city planners, engineers, architects and other consultants for any such services as it may require; provided, that any expenditure of the commission, exclusive of any from gifts and donations, shall be within the amounts appropriated for that purpose by the city council; and provided, that no indebtedness for which the city shall be liable shall be contracted by the commission without approval of and appropriation by the city council as authorized by G.S. 160A-363.
(Code 1973, § 2-23)

Sec. 2-140. Acceptance and use of gifts and donations.

The planning and zoning commission may accept any or all gifts and donations for the exercise

of its functions and may expend the funds received from such donations as, in its judgment, may best benefit the purpose of the commission.
(Code 1973, § 2-24)

State law reference—Authority of planning and zoning commission to accept and use donations or gifts, G.S. 160A-363.

Sec. 2-141. Standards for preparation of master plan and zoning districts.

In the preparation of a master plan and zoning districts described in section 2-137, the commission shall make careful and comprehensive surveys and studies of the present condition and future growth of the city and the area within one mile of the corporate limits of the city, and with due regard to its relation to surrounding territory. Planning and zoning shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of such area and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provisions for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good design and arrangement, wise and efficient expenditure of public funds and the adequate provision of public utilities and other public requirements.
(Code 1973, § 2-25)

Sec. 2-142. Adoption of master plan; assistance of city officers and employees.

(a) Before the adoption of a master plan or zoning districts as described in section 2-141 or any part, amendment, extension or addition, the commission shall hold at least one public hearing thereon. The commission shall have power to promote public interest in and understanding of the plan, and, to that end, may publish and distribute copies of the plan or of any report and may employ such other means of publicity and education as it may determine.

(b) Members of the commission, when duly authorized by the council, may attend city planning conferences or meetings of city planning institutes or hearings upon pending city planning legislation, and the council may by approval by vote of the members recorded upon the minutes approve paying the reasonable travel expenses incident to such attendance.

(c) All officers and employees of the city shall render such reasonable assistance and any such information to the planning and zoning commission as may be requested by the commission for its work.

(Code 1973, § 2-26)

State law reference—Public hearings held by commission, G.S. 160A-387.

Secs. 2-143—2-165. Reserved.

DIVISION 3. GASTON COUNTY HISTORIC PROPERTIES COMMISSION

Sec. 2-166. Purpose.

The purpose of establishing the joint county historic properties commission shall be to:

- (1) Safeguard the heritage of the county by preserving any property therein that embodies important elements of its cultural, social, economic, political or architectural history;
- (2) Promote the use and conservation of such property for the education, pleasure and enrichment of the county and the state; and
- (3) Recommend sites for designation as historic properties on the basis of individual merit and historical significance.

(Code 1973, § 2-28)

Sec. 2-167. Composition; term of office.

(a) The commission shall consist of seven members with each one selected by the county commissioners from their respective townships. The

terms of the commission members shall be four years. The three members drawing short straws shall serve an initial term of two years.

- (1) A majority of the members of the historic properties commission shall have demonstrated special interest, experience or education in history, preservation, architecture, real estate or law.
- (2) The historic properties commission shall elect annually a chairperson, vice-chairperson, secretary and treasurer, who shall act as the executive committee.

(b) The seven commission members shall appoint advisory staffs to secure adequate representation from the towns included in their respective townships. The members of the advisory staffs shall be ex officio members of the historic properties commission and shall have no voting power. The size of the advisory staffs shall vary in size, proportionate to the population of the townships. The initial size of the advisory staffs shall be:

- (1) Gastonia Township, five members;
- (2) South Point Township, three members;
- (3) River Bend Township, two members;
- (4) Dallas Township, one member;
- (5) Cherryville Township, one member; and
- (6) Crowders Mountain Township, one member.

(c) The historic properties commission executive committee shall appoint an inventory committee for the purpose of making an index of the historic properties in the county. Those appointed may come from the historic properties commission, the advisory staffs or from the county population at large. The inventory committee shall include no less than three members, one responsible for photographic work. The term is continual and any vacancy may be filled by appointment by the executive committee.

(Code 1973, § 2-29)

Sec. 2-168. Powers and authority.

The joint county historic properties commission shall have all the powers and authority as prescribed in G.S. 160A-399.1—160A-399.13 with the following exceptions:

- (1) The joint county historic properties commission shall have the authority to acquire property designated by ordinance as historic property with any funds which may be appropriated for that purpose.
- (2) All lands, buildings or structures acquired by the joint county historic properties commission, whether from private or public funds, may be acquired and held in the name of the historic properties commission.

(Code 1973, § 2-30)

State law reference—Similar provisions, G.S. 160A-399.8, 160A-399.10.

Chapter 3

ALCOHOLIC BEVERAGES*

Article I. In General

Sec. 3-1. Sunday sales.
Secs. 3-2--3-30. Reserved.

Article II. Consumption and Possession

Sec. 3-31. Definitions.
Sec. 3-32. Consumption on public streets and municipal and other property.
Sec. 3-33. Possession of open containers on public streets and municipal and other property.
Sec. 3-34. Possession during special events.
Sec. 3-35. Penalty for violation of article.

* **Cross References:** Amusements and entertainments, ch. 4; businesses, ch. 10.
State Law References: Regulation of alcoholic beverages, G.S. 18B-100 et seq.

ARTICLE I. IN GENERAL

Sec. 3-1. Sunday sales.

It shall be unlawful for any person to sell, or otherwise dispense, any malt beverages, unfortified wine or fortified wine, spirituous liquor or mixed alcoholic beverages between the hours of 12:00 noon on Sunday until 7:00 a.m. on the following Monday, except for those sales in establishments having brown-bagging or mixed beverages permits.

(Ord. of 8-12-96, § 14-1.2)

State Law References: Municipal authority to regulate Sunday sale of malt beverages and wine, G.S. 18B-1004(d); limitations on enactment of Sunday closing ordinances, G.S. 160A-191.

Secs. 3-2--3-30. Reserved.

ARTICLE II.

CONSUMPTION AND POSSESSION

Sec. 3-31. Definitions.

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

Malt beverage means beer, lager, malt liquor, ale, porter and any other brewed or fermented beverage containing at least one-half of one percent, and not more than six percent alcohol by volume.

Open container means a container whose seal has been broken or a container other than the manufacturer's unopened original container.

Public street means any highway, road, street, avenue, boulevard, alley, bridge or other way within and/or under the control of the city and open to public use, including the sidewalks of any such street.

Unfortified wine means wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet or dextrose sugar, and that has an alcoholic content of not more than 17 percent alcohol by volume.

(Ord. of 8-12-96, § 14-1.1(1))

Cross References: Definitions generally, § 1-2.

State Law References: Similar provisions, G.S. 18B-101(9), 18B-101(15), 18B-300(c).

Sec. 3-32. Consumption on public streets and municipal and other property.

It shall be unlawful for any person to consume malt beverages and/or unfortified wine on the public streets. Furthermore, it shall be unlawful for any person to consume malt beverages and/or unfortified wine on any property, whether located inside or outside the corporate limits, owned, occupied or controlled by the city including, but not limited to, public buildings and the grounds appurtenant thereto, municipal parking lots, public parks, playgrounds, recreational areas, tennis courts and other athletic fields. It shall also be unlawful for any person to consume spirituous liquor, mixed alcoholic beverages, malt beverage and/or unfortified wine:

- (1) Upon the premises of an ABC store;
- (2) Upon the premises of any licensee or permittee granted a license or permit for the off-premises only sale of unfortified wine or malt beverages;
- (3) At any public place; and
- (4) Upon any premises where the owner thereof has forbidden the display or consumption of such alcoholic beverages upon such premises.

(Ord. of 8-12-96, § 14-1.1(2))

State Law References: Authority to regulate the consumption of alcoholic beverages on public streets or in areas controlled, owned or occupied by the city, G.S. 18B-300(c)(1).

Sec. 3-33. Possession of open containers on public streets and municipal and other property.

It shall be unlawful for any person to possess any open container of malt beverage and/or unfortified wine on the public streets. Furthermore, it shall be unlawful for any person to possess any open container of malt beverage and/or unfortified wine on any property, whether located inside or outside the corporate limits, owned, occupied, or controlled by the city including, but not limited to, public buildings and the grounds appurtenant thereto, municipal parking lots, public parks, playgrounds, recreational areas, tennis courts and other athletic fields. It shall also be unlawful for any person to possess any open container of spirituous liquor, mixed alcoholic beverages, malt beverage and/or unfortified wine:

- (1) Upon the premises of an ABC store;
- (2) Upon the premises of any licensee or permittee granted a license or permit for the off-premises only sale of unfortified wine or malt beverages;
- (3) At any public place; and
- (4) Upon any premises where the owner thereof has forbidden the display or consumption of such alcoholic beverages upon such premises.

(Ord. of 8-12-96, § 14-1.1(3))

State Law References: Authority to regulate the possession of open containers of alcoholic beverages on property owned, occupied or controlled by the city, G.S. 18B-300(c)(2).

Sec. 3-34. Possession during special events.

It shall be unlawful for any person to possess malt beverages and/or unfortified wine on public streets, alleys or parking lots which are temporarily closed to regular traffic for special events, unless the city council adopts a resolution making other provisions for the possession of malt beverages and/or unfortified wine at the special event.

(Ord. of 8-12-96, § 14-1.1(4))

State Law References: Special occasion permit, G.S. 18B-1001(8); limited special occasion permit, G.S. 18B-1001(9).

Sec. 3-35. Penalty for violation of article.

Violation of this article shall constitute a misdemeanor, punishable in accordance with G.S. 14-4.

(Ord. of 8-12-96, § 14-1.1(5))

Chapter 4

AMUSEMENTS AND ENTERTAINMENTS*

Article I. In General

Secs. 4-1--4-35. Reserved.

Article II. Pool and Billiards

Division 1. Generally

Sec. 4-36. Definitions.
Sec. 4-37. Ownership, maintenance or operation of tables generally.
Sec. 4-38. Persons exempted from provisions of article.
Sec. 4-39. Maintenance; entry of city officials; obstruction of view into establishment.
Sec. 4-40. Appointment and duties of inspector.
Sec. 4-41. Employment of certain persons.
Sec. 4-42. Acts prohibited on premises.
Secs. 4-43--4-65. Reserved.

Division 2. License

Sec. 4-66. Required.
Sec. 4-67. Persons not eligible for issuance.
Sec. 4-68. Applications.
Sec. 4-69. Investigations of applicant.
Sec. 4-70. Reports on investigation of applicant; refusal to issue; appeal of refusal to issue.
Sec. 4-71. Issuance generally; form.
Sec. 4-72. Display.
Sec. 4-73. Transfer.
Sec. 4-74. Issuance of duplicate.
Sec. 4-75. Revocation.

Cross References: Alcoholic beverages, ch. 3.

State Law References: Municipal authority to regulate places of amusement, G.S. 160A-181.

ARTICLE I. IN GENERAL

Secs. 4-1--4-35. Reserved.

ARTICLE II. POOL AND BILLIARDS*

DIVISION 1. GENERALLY

Sec. 4-36. Definitions.

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

Pool hall shall mean any place or location where three or more billiard or pool tables, regardless of size, are kept and maintained, and where any person can play the game of billiards or pool by the payment of a fee or charge, by the purchase of goods or merchandise, by the purchase, possession or presentation of a ticket or token or by a charge being made for the caring of clothing or other property or any other service; or where any person may gain admission and the privilege of playing billiards or pool by the payment of dues or subscriptions of membership in any society, fraternity, club or any other organization, and which place or location is maintained, occupied and used for the primary and main purpose of operating a pool hall and offering any person the privilege of playing pool or billiards. This definition shall not prevent the incidental sale or offer of sale of goods, merchandise, food, refreshments or services at such place or location in connection with such pool hall operation.

(Code 1973, § 4-1)

Cross References: Definitions generally, § 1-2.

Sec. 4-37. Ownership, maintenance or operation of tables generally.

It shall be unlawful for any person to own, maintain or operate any pool or billiard table, except in connection with the conduct of a pool hall which has been and is then duly licensed pursuant to the provisions of this article, or unless ownership, maintenance or operation thereof is

* **Cross References:** Businesses, ch. 10.

exempted from the provisions of this article, by section 4-38.

(Code 1973, § 4-2)

Sec. 4-38. Persons exempted from provisions of article.

The provisions of this article shall not apply to fraternal, benevolent or charitable organizations having a national charter, American Legion Posts or other local posts or organizations of other veterans' organizations chartered by Congress or organized, operated and chartered on a statewide or nationwide basis, Young Men's Christian Associations, Young Women's Christian Associations, churches or religious bodies, governmental recreation centers, the occupant of a private residential house, schools, colleges or hospitals, who own, maintain or operate one or more pool or billiard tables on their respective premises which premises are wholly and exclusively used for their respective purposes and who charge no game fees for playing pool or billiards.

(Code 1973, § 4-3)

Sec. 4-39. Maintenance; entry of city officials; obstruction of view into establishment.

(a) All pool halls shall be kept at all times in a clean, neat, safe, healthful and sanitary condition and, together with all stairways, outer entrances and rooms incidental to its use, shall be well lighted.

(b) The place or premises at which any pool hall is located and conducted shall at all times be subject to entry by any official of the city for the purpose of inspecting the condition thereof or the conduct thereon.

(c) It shall be unlawful to obstruct or allow to be obstructed any glass door or window of any pool hall which opens upon any public street or alleyway for the purpose of permanently cutting off the view through such glass door or window of the interior of any such poolroom from such public street or alleyway.

(Code 1973, § 4-4)

Sec. 4-40. Appointment and duties of inspector.

The city manager shall have the authority to appoint an employee of the city as pool hall inspector, whose duties shall be to make frequent inspections of pool halls, to see that the provisions of this article are complied with, to report to the city clerk violations, instances of unclean premises or improper conduct and to make recommendations to city council for revocation of licenses.

(Code 1973, § 4-5)

Sec. 4-41. Employment of certain persons.

It shall be unlawful for any licensee in carrying on any pool hall business or operation to knowingly employ or continue the employment of any person who has been

convicted of a felony or other crime involving moral turpitude or who has within two years prior thereto been adjudged guilty of violating any alcoholic beverage law or of twice violating within such two years any provisions of this article or within such two years has completed sentence for violation of any alcoholic beverage law or a second violation of this article.
(Code 1973, § 4-6)

Sec. 4-42. Acts prohibited on premises.

It shall be unlawful for a licensee or for an employee of the licensee to:

- (1) Permit any dice to be thrown, to permit any cards to be played, to permit any raffle or other game of chance or to permit any form of gambling in or on the licensed premises or location.
- (2) Sell or permit the sale of any intoxicating beverages whatsoever, including, but not limited to, wine, beer and whiskey, whether otherwise permitted by law or not, on the licensed premises.
- (3) Permit any intoxicating beverages of any kind whatsoever, including, but not limited to, wine, beer or whiskey to be consumed on the licensed premises.
- (4) Permit or to allow any conduct or condition which constitutes a nuisance or a menace to good order or public health or morals to exist or continue on the licensed premises.
- (5) Operate or permit the operation of slot machines, punchboards or other automatic gaming machines on the licensed premises, whether such machines be otherwise legal or not.

(Code 1973, § 4-7)

Secs. 4-43--4-65. Reserved.

DIVISION 2.

LICENSE

Sec. 4-66. Required.

No pool hall shall be operated or conducted until it shall have been first duly licensed and the license required

for the operation and the conduct thereof shall be in force and not revoked, pursuant to the provisions of this division.
(Code 1973, § 4-8)

Sec. 4-67. Persons not eligible for issuance.

The city shall not issue a license required by this division:

- (1) For a location which is not safe, clean and well lighted and which does not comply with the building and fire codes and other provisions of this Code and other ordinances of the city or of the laws of the state.
- (2) To any individual, to a partnership of which any member or to a corporation of which any one of its officers or directors has ever been convicted of a felony or other crime involving moral turpitude or who has, within two years prior to the filing of the application for license, been adjudged guilty of violating any alcoholic beverage laws or of twice within such two years violating provisions of this article or within such two years has completed a sentence for violation of such alcoholic beverage laws or of a second violation of this article.
- (3) To any individual, to a partnership of which any member or to a corporation of which any one of its officers or directors within two years of filing such application falsifies such application or has falsified any application for any such license within two years prior thereto.

(Code 1973, § 4-9)

Sec. 4-68. Applications.

It shall be the duty of every person desiring to operate, own, promote, conduct or maintain a pool hall to apply to the city for a permit and license. Such application shall be written and in accordance with the form provided by the city clerk, which form shall be filed with the city clerk fully completed.
(Code 1973, § 4-10)

Sec. 4-69. Investigations of applicant.

Upon the filing of a duly completed application in

Concordance with section 4-68, the city clerk shall refer the application to the chief of police, the chief of the fire department and the building inspector, who shall investigate each applicant or place sought to be licensed to determine whether such applicant and place meets and complies with the provisions of this Code, other ordinances of the city and state law. Such officials shall complete such investigations within ten days after such application is filed.
(Code 1973, § 4-11)

Sec. 4-70. Reports on investigation of applicant; refusal to issue; appeal of refusal to issue.

(a) Upon completion of the investigation provided for in section 4-69, the city officials making such investigation shall indicate on such application their respective recommendation; and if not recommended shall relay their findings to the city clerk. No license shall be granted if the applicant or place sought to be licensed does not comply or meet the provisions of this Code, other ordinances of the city and state law. If any of such officials indicates his disapproval, by his nonrecommendation on such application, such license shall not be granted. If any of such officials indicates his nonrecommendation on such application, the city clerk shall notify the applicant, who, within 30 days thereafter by written notice filed with the city clerk, may appeal the refusal to issue such license to the city council. If such appeal is perfected within the time limited, the city council shall hold a hearing thereon at their next regular meeting following receipt of such notice or at such time within 21 days from receipt of such notice that they notify the applicant or his attorney that such hearing will be held. The city council may continue any hearing date. After such hearing, the city council may, in any case, by majority vote of its members refuse or order the issuance of such license.

(b) If an application for a license is refused, the amount deposited with such application to cover the required license fee shall be returned to the applicant.
(Code 1973, § 4-12)

Sec. 4-71. Issuance generally; form.

(a) If upon the completion of the investigation provided for in section 4-69, all the city officials making such investigation indicate on the application required to be filed that they each recommend issuance of such license, or if the city council orders issuance of such license pursuant to a hearing under the provisions of section 4-70, the city clerk shall be authorized to issue such license. No license shall be issued until the required license fee is paid in cash or by certified or cashier's check.

(b) The license shall specify the licensee, the specific location where the pool hall is authorized, the number of tables authorized to be operated thereunder, the date on which the license shall begin and expire and such license shall be effective only for such stated period.
(Code 1973, § 4-13)

Sec. 4-72. Display.

Any license issued under this division shall be enclosed in a suitable frame having a clear glass face and a substantial wood or metal back, so that the whole of such license may be seen therein, and shall be posted and at all times displayed in a conspicuous place in the location for which the licensed pool hall is conducted. It shall be unlawful for any person to post such license or to permit it to be posted upon any premises other than those for which the license was issued or to knowingly deface or destroy any such license.
(Code 1973, § 4-14)

Sec. 4-73. Transfer.

Any license issued under this division shall not be transferred to any other person or place of business.
(Code 1973, § 4-15)

Sec. 4-74. Issuance of duplicate.

When a license issued under this division is lost or destroyed, a duplicate thereof shall be issued by the city clerk upon the payment of the currently required fee.
(Code 1973, § 4-16)

Sec. 4-75. Revocation.

(a) A second conviction within a two-year period for a violation of any of the provisions of this division shall, when judgment becomes final, automatically act as a revocation of the license.

(b) The city council may at any time hold a hearing to consider the revocation of any license issued under this division, and after such hearing revoke such license for any cause which it deems proper, which revocation shall be final; provided, that prior to such hearing the city shall give the licensee six days' written notice thereof, and the licensee shall have the right to appear and be heard at such hearing.
(Code 1973, § 4-17)

Chapter 5
RESERVED

Chapter 6

ANIMALS*

Article I. In General

Sec. 6-1. City declared bird sanctuary; molestation of birds; procedure where birds present hazard.

Sec. 6-2. Allowing stock or poultry to run at large.

Sec. 6-3. Allowing animal to graze upon the streets or public places.

Sec. 6-4. Location of horse, pony or donkey lots.

Secs. 6-5--6-35. Reserved.

Article II. Dogs

Sec. 6-36. County ordinance adopted.

*

State Law References: Municipal authority to regulate domestic animals, G.S. 160A-186.

**AN ORDINANCE AMENDING CHAPTER 6, ARTICLE I, OF THE CODE OF
ORDINANCES OF THE CITY OF CHERRYVILLE TO ADD SECTION 6-5**

Sec 6-5 Effective November 14, 2007, it shall be unlawful for any person to have on any lot or premises within the city limits of Cherryville a combination of more than six (6) dogs or cats over four (4) months of age. This section shall not apply to Veterinary or Animal Hospitals.

(Ord of 5-14-2007) (*NC State law reference: GS 160A-186)

~~Sees. 6-5—6-35. Reserved.~~

~~Secs. 6-6—6-35. Reserved.~~

ARTICLE I.

IN GENERAL

Sec. 6-1. City declared bird sanctuary; molestation of birds; procedure where birds present hazard.

(a) The entire area embraced within the corporate limits of the city is hereby a bird sanctuary.

(b) It shall be unlawful to trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests; provided, that if starlings or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the proper health authorities of the city, then such health authorities shall meet with the representatives of the Audubon Society, bird club, garden club or humane society, or as many of such clubs as are found to exist in the city after having given at least three days' actual notice of the time and place of such meeting to the representatives of such clubs.

(c) If as a result of such meeting no satisfactory alternative is found to abate such nuisance, then such birds may be destroyed in such numbers and in such manner as is deemed advisable by such health authorities under the supervision of the chief of police of the city.

(Code 1973, § 3-1)

Cross References: Use of weapons or missiles prohibited, § 20-4.

State Law References: Municipal authority of city to establish a bird sanctuary, G.S. 160A-188.

Sec. 6-2. Allowing stock or poultry to run at large.

It shall be unlawful for any person to permit stock or poultry to run at large.

(Code 1973, § 3-3)

Sec. 6-3. Allowing animal to graze upon the streets or public places.

It shall be unlawful for any person to stake, hold or in any other manner graze any horse, cow or other animal upon any of the streets or the public squares or lots of the city.

(Code 1973, § 3-4)

Sec. 6-4. Location of horse, pony or donkey lots.

It shall be unlawful for any citizen of the city to maintain a lot in which horses, ponies or donkeys are kept which is closer than 200 feet to any residence.
(Code 1973, § 3-5)

Sec. 6-5. Allowed number of dogs and cats

Effective January 1, 2008, it shall be unlawful for any person to have on any lot or premises within the city limits of Cherryville a combination of more than six (6) dogs or cats over four (4) months of age. This section shall not apply to Veterinary or Animal Hospitals.
(Ord of 6-11-2007)(*NC State law reference: GS 160a-186)

Secs. 6-6--6-35. Reserved.

ARTICLE II.

DOGS

Sec. 6-36. County ordinance adopted.

The city adopted the Gaston County ordinance entitled "An ordinance regulating dogs and other animals" on August 10, 1981. The ordinance is not set out herein, but is saved from repeal and is on file and available in the office of the city clerk.

ARTICLE I. IN GENERAL**Sec. 6-1. City declared bird sanctuary; molestation of birds; procedure where birds present hazard.**

(a) The entire area embraced within the corporate limits of the city is hereby a bird sanctuary.

(b) It shall be unlawful to trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests; provided, that if starlings or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the proper health authorities of the city, then such health authorities shall meet with the representatives of the Audubon Society, bird club, garden club or humane society, or as many of such clubs as are found to exist in the city after having given at least three days' actual notice of the time and place of such meeting to the representatives of such clubs.

(c) If as a result of such meeting no satisfactory alternative is found to abate such nuisance, then such birds may be destroyed in such numbers and in such manner as is deemed advisable by such health authorities under the supervision of the chief of police of the city.
(Code 1973, § 3-1)

Cross References: Use of weapons or missiles prohibited, § 20-4.

State Law References: Municipal authority of city to establish a bird sanctuary, G.S. 160A-188.

Sec. 6-2. Allowing stock or poultry to run at large.

It shall be unlawful for any person to permit stock or poultry to run at large.
(Code 1973, § 3-3)

Sec. 6-3. Allowing animal to graze upon the streets or public places.

It shall be unlawful for any person to stake, hold or in any other manner graze any horse, cow or other animal upon any of the streets or the public squares or lots of the city.
(Code 1973, § 3-4)

Sec. 6-4. Location of horse, pony or donkey lots.

It shall be unlawful for any citizen of the city to maintain a lot in which horses, ponies or donkeys are kept which is closer than 200 feet to any residence.

(Code 1973, § 3-5)

Secs. 6-5--6-35. Reserved.

ARTICLE II.**DOGS****Sec. 6-36. County ordinance adopted.**

The city adopted the Gaston County ordinance entitled "An ordinance regulating dogs and other animals" on August 10, 1981. The ordinance is not set out herein, but is saved from repeal and is on file and available in the office of the city clerk.

NEW SECTION FOR CHAPTER 6 (ANIMALS SECTION):

Any person owning, harboring, walking, in possession of, or in charge of any animal, which defecates on any public property, public park property, public right-of-ways OR on any private property without the permission of the property owner, shall remove the feces immediately after it is deposited by the animal and place it properly in a suitable bag or other container that closes/seals and dispose of it properly.

(Cherryville Code of Ordinances Section 6-6)

The above addition to the City of Cherryville Code of Ordinances was discussed and adopted by council **effective 5.8.2017** (jsh)

Chapter 7
RESERVED

Chapter 8

BUILDINGS AND BUILDING REGULATIONS*

Article I. In General

Secs. 8-1--8-35. Reserved.

Article II. Building Code

Sec. 8-36. Adoption.
Sec. 8-37. Enforcement.
Sec. 8-38. Fees.
Secs. 8-39--8-60. Reserved.

Article III. Electrical Code

Sec. 8-61. Adoption.
Sec. 8-62. Enforcement.
Secs. 8-63--8-90. Reserved.

Article IV. Plumbing Code

Sec. 8-91. Adoption.
Sec. 8-92. Enforcement.
Secs. 8-93--8-120. Reserved.

Article V. Unsafe Buildings and Dwellings

Sec. 8-121. Definitions.
Sec. 8-122. Legislative findings.
Sec. 8-123. Applicability of article; departmental enforcement procedures.
Sec. 8-124. Powers of public officer.
Sec. 8-125. Building declared public nuisance when order not complied with; penalty.
Sec. 8-126. Duty to examine dwellings and buildings where unsafe conditions exist.
Sec. 8-127. Powers of inspector generally.
Sec. 8-128. Enforcement powers.
Sec. 8-129. Determination of unsafe conditions.
Sec. 8-130. Complaints, notices and orders--Service; posting on premises; filing copies.
Sec. 8-131. Same--Unauthorized removal.
Sec. 8-132. Penalty for allowing unsafe building to stand after notification.
Sec. 8-133. Emergency repair or demolition of dwellings and buildings.
Sec. 8-134. Report of names and addresses of persons in violation of article.

Cross References: Fire prevention and protection, ch. 16; solid waste, ch. 22; utilities, ch. 30.
State Law References: Municipal authority regarding buildings, G.S. 160A-411--160A-438.

ARTICLE I. IN GENERAL

Secs. 8-1--8-35. Reserved.

ARTICLE II. BUILDING CODE

Sec. 8-36. Adoption.

The Building Code of Gaston County, North Carolina is hereby adopted as the building code of the city and shall have the same force and effect as if fully set out herein. Such building code shall govern all building work undertaken within the city.

(Code 1973, § 5-1)

State Law References: Authority of city to adopt building code, G.S. 143-138; adoption of building code by reference, G.S. 160A-76.

Sec. 8-37. Enforcement.

(a) The building inspector of the county and the county inspection department are hereby authorized, empowered and directed to exercise in all respects their powers relating to the enforcement of the building code adopted in this article, within the city limits of the city until such time as the city council shall officially withdraw their request.

(b) The county building inspector is hereby authorized and directed to establish such administrative procedures as may in his opinion be necessary to accomplish the authority granted him and the county inspection department by this section.

(Code 1973, § 5-2)

State Law References: Authority of county building inspector to exercise his power within city, G.S. 160A-413.

Sec. 8-38. Fees.

Any person applying for a building permit shall pay a fee as established by the city council from time to time. The current schedule of such fees as established by the city council shall be kept on file in the office of the city clerk.

(Code 1973, § 5-6)

State Law References: Municipal authority to establish fees for building permits, G.S. 160A-414.

Secs. 8-39--8-60. Reserved.

ARTICLE III. ELECTRICAL CODE

Sec. 8-61. Adoption.

The Electrical Code of Gaston County, North Carolina is hereby adopted as the electrical code of the city and shall have the same force and effect as if fully set out in this article. Such electrical code shall govern all electrical work undertaken within the city.

(Code 1973, § 7-1)

State Law References: Authority of city to adopt electrical code by reference, G.S. 160A-76.

Sec. 8-62. Enforcement.

(a) The building inspector of the county and the county inspection department are hereby authorized, empowered and directed to exercise in all respects their powers relating to the enforcement of the electrical code adopted in this article, within the municipal limits of the city until such time as the city council shall officially withdraw its request.

(b) The county building inspector is hereby authorized and directed to establish such administrative procedures as may in his opinion be necessary to accomplish the authority granted him and the county inspection department by this section.

(Code 1973, § 7-2)

State Law References: Authority of city to appoint county inspector to exercise his power within city, G.S. 160A-413.

Secs. 8-63--8-90. Reserved.

ARTICLE IV. PLUMBING CODE

Sec. 8-91. Adoption.

The Plumbing Code of Gaston County, North Carolina is hereby adopted as the plumbing code of the city and shall have the same force and effect as if fully set out in this article. Such plumbing code shall govern all plumbing work undertaken in the city.

(Code 1973, § 15-1)

State Law References: Authority of city to adopt plumbing code by reference, G.S. 160A-76.

Sec. 8-92. Enforcement.

(a) The building inspector of the county and the county inspection department are hereby authorized, empowered and directed to exercise in all respects their powers relating to the plumbing code adopted in this article

within the city until such time as the city council shall officially withdraw their requests.

(b) The county building inspector is hereby authorized and directed to establish such administrative procedures as may in his opinion be necessary to accomplish the authority granted him and the county inspection department by this section.
(Code 1973, § 15-2)

Secs. 8-93--8-120. Reserved.

ARTICLE V. UNSAFE BUILDINGS AND DWELLINGS*

* **State Law References:** Minimum housing standards, G.S. 160A-441 et seq.

Sec. 8-121. Definitions.

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

Building means any structure or part thereof not a dwelling.

Dwelling means any structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouse and appurtenances belonging thereto or usually enjoyed therewith.

Inspector means the building inspector or such other person designated by the city manager.

Owners means the holder of the title in fee simple and every mortgage, judgment and lien holder of record.

Parties in interest means individuals, associations and corporations who have interests of record in a dwelling or building, and any who are in possession thereof.

Public authority means any officer who is in charge of any department of the government of the city, county or state relating to health, fire, building regulations or other activities concerning dwellings or buildings in the city.

Public officer means the officer, including the building inspector, who are authorized by the provisions of this article to exercise the powers prescribed by such provisions.

(Code 1973, § 5-7)

Cross References: Definitions generally, § 1-2.

Sec. 8-122. Legislative findings.

(a) It is found as a fact that there exist in the city dwellings which are dangerous or unsafe due to dilapidation, defects increasing hazards of fire, accident or other calamities, due to other conditions rendering such dwellings unsafe, unsanitary, dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of the city.

(b) It is found as a fact that there exist in the city buildings which are dangerous due to dilapidation, defects increasing the hazards of fire, accident or other calamities, and due to other conditions rendering such buildings unsafe, unsanitary or detrimental to health, safety or morals, or otherwise inimical to the welfare of the residents of the city.
(Code 1973, § 5-8)

Sec. 8-123. Applicability of article; departmental enforcement procedures.

(a) The powers conferred upon the inspector by the provisions of this article shall be in addition to the powers conferred upon the inspector by any other ordinance. Nothing in this article shall be construed to impair or limit in any way the power of the city to define nuisances and to cause their removal or abatement by proceedings or otherwise. The measures and procedures provided for in this article do not supersede and this article does not repeal, or any other measures or procedures which are provided by ordinance or state law for the elimination, repair or correction of the conditions referred to in section 8-122, but the measures and procedures herein provided for shall be in addition to same.

(b) It shall be the duty of the city manager to coordinate and set up proper departmental enforcement procedures to carry out the provisions of this article.
(Code 1973, § 5-17)

Sec. 8-124. 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 purpose and provisions of this article, including the powers specifically contained in G.S. 160A-448.
(Code 1973, § 5-18)

Sec. 8-125. Building declared public nuisance when order not complied with; penalty.

If any order issued and served in accordance with this article is not complied with in the time specified therein, the building or dwelling with respect to which the order has been issued is hereby declared to be a public nuisance. It shall be unlawful for any person that has knowledge of the issuance of such order to occupy as a human habitation, or use such building, or any part thereof, or to suffer or permit same, or any part thereof, to be occupied as a human habitation or used therefor, and any person violating this section or failing to comply therewith shall be subject to the penalties authorized in section 1-11 for each and every offense. Each day that any such violation or failure to comply continues shall constitute and be a separate and distinct offense.

(Code 1973, § 5-20)

Sec. 8-126. Duty to examine dwellings and buildings where unsafe conditions exist.

It shall be the duty of the inspector to examine diligently any dwelling or building located in the city where conditions described in section 8-125 exist, for the purpose of locating and taking action with respect to such dwellings that appear to be unfit for human habitation or buildings that appear to be dangerous.

(Code 1973, § 5-9)

Sec. 8-127. Powers of inspector generally.

The inspector shall exercise the powers described in this article:

- (1) Whenever a petition is filed with the inspector by a public authority or by at least five residents of the city charging that any building is unsafe or dwelling is unfit for human habitation or whenever it appears to the inspector, on his own motion, that such building is dangerous or any dwelling is unfit for human habitation, the inspector 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 or dwelling a complaint stating the charges in that respect and containing a notice that a hearing will be held before the inspector, or his designated agent, at a place within the county in which the property is located therein fixed not less

than ten days nor more than 30 days after the serving of such complaint; 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 the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the inspector.

- (2) If, after such notice and hearing, the inspector determines that the building is dangerous and unsafe or that the dwelling under consideration is unfit for human habitation he shall state in writing his findings of the fact in support of such determination and shall issue and cause to be served upon the owner thereof an order:

- a. If the repair, alteration or improvement of such dwelling or building can be made at a cost of not more than 60 percent of the value of the dwelling or building, the order shall require the owner, within the time specified therein, to repair, alter or improve such dwelling or building so as to render it safe.
- b. If the repair, alteration or improvement of such dwelling or building cannot be made at a cost equal to or less than 60 percent of the value of the dwelling, the order shall require the owner, within the time specified, to remove or demolish the dwelling or building.

- (3) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling or building, the inspector may cause such dwelling or building to be repaired, altered or improved or to be vacated and closed; and the inspector may cause to be posted on the main entrance of any dwelling or building so closed a placard with the following words:

"This dwelling or building
is dangerous and unsafe or this

dwelling or building is unfit for human habitation; and the use or occupation of this dwelling or building for human habitation is prohibited and unlawful."

Occupation of a dwelling or building so posted shall constitute a misdemeanor.

- (4) If the owner fails to comply with an order to remove or demolish the dwelling or building, the inspector may cause such dwelling or building to be removed or demolished; provided, however, that the duties of the inspector set forth in subsection (3) of this section and this subsection shall not be exercised until the city council shall have by ordinance ordered the inspector to proceed to effectuate the purpose of this article with respect to the particular property or properties which the inspector shall have found to be unfit for human habitation and unsafe and which property shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling or building until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code and the provisions of this article. The ordinance relating to the specific property found to be unfit for human habitation or dangerous and unsafe and subject to removal or demolition shall, when duly adopted, be recorded in the office of the register of deeds for the county and shall be indexed in the name of the property owners in the grantor index.
- (5) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the inspector or under his orders shall be a lien against the real property upon which cost was incurred, which lien shall be filed, have the same priority and be collected as a lien for special assessments as provided in G.S. 160A-216 et seq.
 - a. If the dwelling or building is removed or demolished by the inspector, he shall sell the materials of such dwellings and

buildings 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 inspector, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court.

- b. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

- (6) Failure on the part of any owner or parties in interest to receive or have served upon him any complaint, notice or order provided for in this section shall not affect or invalidate the proceedings with respect to any other owner or party in interest or any other person.
- (7) Any person affected by an order issued by the inspector may petition to the superior court for an injunction restraining the inspector from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the inspector pending the final disposition of the cause; provided, however, that within 60 days after the posting and service of the order of the inspector, such person shall present such petition to the court. Hearings shall be had by the court and given preference over other matters of the court's calendar as by law required. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require; provided, however, that it shall not be necessary to file bond in any amount before obtaining a temporary injunction under this section.

(Code 1973, § 5-10)

Sec. 8-128. Enforcement powers.

The inspector shall have such powers as may be necessary, lawful or convenient to carry out and effectuate the purpose and provisions of this article, including, without limiting the generality of the foregoing, the following powers in addition to others granted in this article:

- (1) To investigate and examine dwellings and building conditions in the city in order to determine which dwellings and buildings are unfit for human habitation and dangerous, being guided in such examination of dwellings and buildings by the requirements set forth, and to administer oaths, affirmations, examine witnesses and receive evidence.
- (2) To enter upon and within premises, dwellings and buildings for the purposes of making examinations and investigations; provided, that such entries shall be lawful and made in such manner as to cause the least possible inconvenience to the persons in possession.
- (3) To appoint and fix the duties, as provided in this article, of such officers, agents and employees as he deems necessary to carry out the purpose of this article.
- (4) To delegate any of his functions and powers under this article to such officers and agents as he may designate.

(Code 1973, § 5-11)

Sec. 8-129. Determination of unsafe conditions.

(a) The inspector shall determine that a dwelling or a building is unfit for human habitation or dangerous if he finds that any of the following conditions exist in such dwellings or buildings:

- (1) Supporting member or members which show 33 percent or more of damage or deterioration or nonsupporting enclosing or outside walls or covering which show 50 percent or more damage or deterioration;
- (2) Floors or roofs which have improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used;

- (3) Such damage by fire, wind or other causes as endangers the lives, safety or welfare of the occupants or other people in the city;
- (4) Dilapidation, decay or disrepair, which is likely to cause sickness or disease, or to work injury to the health, safety or welfare of people of the city;
- (5) Inadequate facilities for egress in case of fire or panic;
- (6) Defects therein increasing the hazards of fire, accident or other calamities;
- (7) Violation of any provisions of the building regulations or fire prevention laws or ordinances of the state or city.

(b) Every building which shall appear to the inspector to be especially dangerous to life because of its liability to fire or in case of fire by reason of bad condition of walls, overloaded floors, defective construction, decay or other causes shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of such building.

(Code 1973, § 5-12)

Sec. 8-130. Complaints, notices and orders--Service; posting on premises; filing copies.

Complaints, notices or orders issued by the inspector pursuant thereto shall be served upon persons either personally or by registered or certified mail; but, if the whereabouts of any person is unknown and the same cannot be ascertained by the inspector in the exercise of reasonable diligence, and the inspector shall make an affidavit to that effect, then the serving of such complaint, notice or order upon such person may be made by publication in the manner prescribed in the rules of civil procedure. A copy of any notice, complaint or order served by publication shall be posted in a conspicuous place on the premises affected by the notice, complaint or order on or before the date of the last publication. A copy of such complaint or order shall also be filed by the inspector in the office of the clerk of superior court of the county, as in cases of lis pendens notice, as provided by law.

(Code 1973, § 5-13)

Sec. 8-131. Same--Unauthorized removal.

No person without written consent of the inspector,

shall remove or permit removal of any complaint, notice or order posted in accordance with the provisions of section 8-127. Any person violating or failing to comply with the provisions of this section shall be subject to, and shall pay, a penalty of \$50.00 for each and every offense.
(Code 1973, § 5-14)

against such persons civilly for recovery of such penalty, or criminally as he may determine.
(Code 1973, § 5-19)

Sec. 8-132. Penalty for allowing unsafe building to stand after notification.

If the owner of any dwelling or building which has been condemned as unsafe and dangerous to life by the inspector, after being notified by the inspector in writing of the unsafe and dangerous character of such dwelling or building, shall permit the same to stand or continue in that condition, he shall be guilty of a misdemeanor and shall pay a fine of not less than \$10.00 nor more than \$50.00 for each day such building continues after such notice.
(Code 1973, § 5-15)

Sec. 8-133. Emergency repair or demolition of dwellings and buildings.

(a) In emergency cases where it reasonably appears there is immediate danger to life or safety of any person or to safety of other property, unless a dwelling unfit for human habitation or an unsafe or dangerous structure herein described is immediately repaired or demolished, the inspector shall cause immediate repair or demolition of such dwelling or building and the cost of such repair or demolition shall be recovered and collected as is provided in section 8-127(5).

(b) The employees of the fire department and police department of the city and employees of the health department of the county shall make a report in writing to the inspector of all buildings or structures which are, may be, or are suspected of being unfit for human habitation or a dangerous dwelling or building within the terms of this article, such report to be delivered to the inspector within 48 hours of discovery of such building by such employee of the fire and police departments of the city or health department of the county.
(Code 1973, § 5-16)

Sec. 8-134. Report of names and addresses of persons in violation of article.

The inspector shall promptly report to the city council names and addresses of all persons who have violated or failed to comply with this article, and who are subject to penalty therefor. It shall be the duty of the inspector, with approval of the city council, to proceed

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Chapter 9
RESERVED

Chapter 10

BUSINESSES*

Article I. In General

Sec. 10-1. Itinerant merchants, peddlers and hawkers operating on Sunday.
Secs. 10-2--10-35. Reserved.

Article II. Licenses

Sec. 10-36. Definitions.
Sec. 10-37. Levy of tax generally; transfer.
Sec. 10-38. Application; grant by city clerk; revocation.
Sec. 10-39. Term.
Sec. 10-40. Payment date.
Sec. 10-41. Prorating of tax.
Sec. 10-42. Engaging in business without license.
Sec. 10-43. License required for each separate business.
Sec. 10-44. License required for each place of business; moving or selling business.
Sec. 10-45. Display.
Sec. 10-46. Refund of tax on discontinuance of business.
Sec. 10-47. Religious or charitable organization.
Sec. 10-48. Schedule of fees.
Sec. 10-49. City not to compete with private businesses.

Cross References: Alcoholic beverages, ch. 3; pool and billiards, § 4-36 et seq.; vehicles for hire, ch. 32.

State Law References: Municipal authority to regulate and license businesses, trades, etc., G.S. 160A-194, 160A-211.

Addition to Article I of the City of Cherryville Code of Ordinances

Section 10-2 Farmers Market

Sec. 10-2 Farmers Market Defined

The City of Cherryville recognizes the link between a high quality of living, fresh produce and promoting North Carolina agricultural products. In this spirit the City of Cherryville creates a down town farmers market located at 216 E. Main Street. The market will be open from May 1 through October 31, (day to be determined) (time to be determined). During the normal hours of operation of the market no peddler's license will be required for farmers or other local growers to sell their produce. Enforcement of the rules, regulations or conflicts at the farmers market shall be made by the City Manager and/or his designees.

(effective 5-13-2013 by City Council)

ARTICLE I.

IN GENERAL

Sec. 10-1. Itinerant merchants, peddlers and hawkers operating on Sunday.

(a) It shall be unlawful for any person to operate as an itinerant merchant, peddler or hawker on Sunday within the city.

(b) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

- (1) *Hawker* means a trader who goes from place to place selling goods which he carries with him.
- (2) *Itinerant merchant* means a person engaged in the transient selling of goods from place to place.
- (3) *Peddler* means a person who sells goods which he carries with him in traveling about from place to place.

(c) It shall constitute a misdemeanor for any person to violate the provisions of this section, and in such event any such person shall be subject to the penalties provided by section 1-11.

(Code 1973, § 14-15)

State Law References: Authority of city to license and regulate peddlers, itinerant merchants, etc., G.S. 160A-178.

Secs. 10-2--10-35. Reserved.

ARTICLE II.

LICENSES*

* **State Law References:** Municipal authority to levy privilege license taxes, G.S. 160A-211.

Sec. 10-36. Definitions.

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

Agent means the person having the agency for the manufacturer, producer or distributor.

Business means any business, trade, occupation, profession, avocation or calling of any kind, subject by the provisions of this article, to a license tax.

Engaged in the business means engaged in the business as owner or operator.

Fiscal year means the period beginning with July 1 and ending with June 30 next following.

Quarter means any three consecutive months.
(Code 1973, § 11-1)

Cross References: Definitions generally, § 1-2.

Sec. 10-37. Levy of tax generally; transfer.

In addition to the tax on property as otherwise provided for and under the power and authority conferred in the laws of the state, there shall be levied and collected annually, or more often where provided for, a privilege license tax on trades, professions, agencies, business operations, exhibitions, circuses and all subjects authorized to be licensed as set out in this article. All licenses shall be a personal privilege and shall not be transferable. Nothing contained in this section shall be construed to prevent the city council from imposing, from time to time as they see fit, such license taxes as are not specifically provided for by this article, from increasing or decreasing the amount of any special license tax or from prohibiting or regulating the business or acts licensed. All licenses are granted subject to the provisions of this Code and other ordinances of the city.
(Code 1973, § 11-2)

Sec. 10-38. Application; grant by finance director; revocation.

Any person engaged or desiring to engage in any profession, business or trade shall make application in writing to the finance director stating the name, location and character of his business, trade or profession which he proposes to conduct and the name of the applicant. The finance director, if he or she finds that such business, trade or profession is legal, shall grant such license and give to the person to whom it was issued the right to conduct such business, trade or profession within the corporate limits during the time stated in such license on the payment of the tax in advance as fixed by the city council. Any license issued by the finance director may be revoked for good cause at any time by the finance director subject to the

review of the city council.
(Code 1973, § 11-3)

State Law References: Collection of tax by city tax collector, G.S. 105-33.

Sec. 10-39. Term.

All taxes provided for and fixed in this article shall be for 12 months, unless otherwise specified.
(Code 1973, § 11-4)

Sec. 10-40. Payment date.

All taxes for annual or yearly licenses shall be paid before July 1 in each and every year, except as otherwise provided in this article.
(Code 1973, § 11-5)

Sec. 10-41. Prorating of tax.

Any person commencing business between June 30 and January 1 shall pay the total amount of the annual license tax, between December 31 and April 1 only half of the annual license tax shall be charged and between April 1 and June 30 only one quarter of the annual license tax shall be charged.
(Code 1973, § 11-6)

Sec. 10-42. Engaging in business without license.

It shall be unlawful for any person or his agent or servant to engage in a business in the city for which there is required a license without first having paid the license tax and obtained the license required by this article. For the purposes of this section, the opening of a place of business or offering to sell followed by a single sale or the doing of any act or thing in furtherance of the business shall be construed to be engaging in or carrying on such business.
(Code 1973, § 11-7)

Sec. 10-43. License required for each separate business.

The payment of any particular tax imposed by this article shall not relieve the person paying the same from the payment of any other tax imposed by this article for any other business he may carry on, unless so provided by the section imposing such tax, it being the intent of this article that license taxes prescribed by various sections or subsections of this article applicable to any business shall be cumulative, except where otherwise specifically provided.
(Code 1973, § 11-8)

Sec. 10-44. License required for each place of business;

moving or selling business.

A license issued for the privilege of conducting a business is only valid for the business conducted at the place and by the licensee named therein. Every person doing business in more than one factory, mill, warehouse, store, stall or stand or other place of business shall secure a separate license for each such place of business, unless such places of business are contiguous to each other, communicate directly with and open into each other and are operated as a unit. If the business is moved or if the licensee sells to another, then a new license is necessary, unless a special permit to continue business under the original license is obtained from the city council.
(Code 1973, § 11-9)

Sec. 10-45. Display.

Every license issued under this article shall be kept prominently displayed at the place of business, if the licensee has no fixed place of business, such licensee shall keep such license wherever such business is being operated and where it can be inspected at any time by the proper city official.
(Code 1973, § 11-10)

Sec. 10-46. Refund of tax on discontinuance of business.

No license tax shall be abated nor shall any refund of any part thereof be made in any case where the licensee discontinues his business before the end of the period for which such license was issued.
(Code 1973, § 11-11)

Sec. 10-47. Religious or charitable organization.

The license tax imposed by this article shall not apply to any business operated by any strictly religious or charitable organization when the proceeds of such business are for the exclusive benefit of such organization.
(Code 1973, § 11-12)

State Law References: Exemptions for charitable organizations, G.S. 105-40.

Sec. 10-48. Schedule of fees.

The amounts of the license taxes imposed under this article shall be as are established from time to time by the city council. The schedule of such taxes shall be maintained on file in the finance director's office.
(Code 1973, § 11-13)

State Law References: License taxes generally, G.S. 105-33.

ec. 10-49. City not to compete with private businesses.

The city shall not engage in any business, service or enterprise wherein such business, service or enterprise shall be in competition with private businesses to the damage or harm of private competitors; except, that in cases of emergency, cases affecting public health and safety, and the abatement of public nuisances as defined in section 14-38, the city council may authorize a reasonable charge for such service for the purpose of reimbursement to the city at such time or times as may become necessary.

(Code 1973, § 11-14)



Chapter 11
RESERVED

Chapter 12

CEMETERIES*

Article I. In General

- Sec. 12-1. Name of city cemetery.
- Sec. 12-2. City manager to regulate.
- Sec. 12-3. Permit prerequisite to burial.
- Sec. 12-4. Burial records.
- Sec. 12-5. Application and approval required for disinterment.
- Sec. 12-6. Second interment in same grave.
- Sec. 12-7. Burials restricted to dead human bodies and cemeteries.
- Sec. 12-8. Open during specified hours.
- Sec. 12-9. Requirements for purchase, transfer and use of cemetery lot or grave.
- Sec. 12-10. Reversion of title to city; publication of notice.
- Sec. 12-11. Interment regulations; notice and hours.
- Sec. 12-12. Enclosures, curbing, maintenance and vehicles.
- Sec. 12-13. Carrying flowers from cemeteries prohibited.
- Sec. 12-14. Changing grades of lots; requirement.
- Sec. 12-15. Ornaments prohibited.
- Sec. 12-16. Cemetery superintendent authorized to remove flowers and decorations.
- Sec. 12-17. Removal of rubbish; liability for damage.
- Sec. 12-18. Signs prohibited.
- Secs. 12-19--12-45. Reserved.

Article II. Perpetual Care Trust Fund

- Sec. 12-46. Established.
- Sec. 12-47. Certain surplus revenue placed in fund.
- Sec. 12-48. Expenditures.
- Sec. 12-49. Interest from investments.
- Sec. 12-50. Depository.
- Sec. 12-51. Withdrawals.

Cross References: Administration, ch. 2.

State Law References: Municipal authority regarding cemeteries, G.S. 160A-341 et seq.

ARTICLE I. IN GENERAL

Sec. 12-1. Name of city cemetery.

The city cemetery shall be known as "City Memorial Park."
(Code 1973, § 6-24)

Sec. 12-2. City manager to regulate.

(a) The city manager, either directly or through his representative, shall have general management and control of the cemeteries and burial places owned, operated and maintained by the city, and the persons employed therefor. He may make such rules and regulations for the operation and use of the cemeteries of the city as he may deem requisite and proper, not inconsistent with the provisions of this chapter or the laws of the state. In order to properly maintain such cemeteries and burial places he shall be authorized to employ such persons as are provided for in the budget, and to fix their compensation subject to the approval of the city council. Any such employees may be removed at any time by the city manager; or the City Manager may choose to contract the cemetery maintenance out on a yearly basis.

Sec. 12-3. Permit prerequisite to burial.

The City Manager or his representative in charge of any city cemetery shall not inter or permit the interment, disinterment or other disposition of any body on such premises unless it is accompanied by a burial-transit permit as required by state law.
(Code 1973, § 6-2)

Sec. 12-4. Burial records.

The City Manager or his representative in charge of any city cemetery shall keep and maintain a permanent record of all bodies interred, reinterred, disinterred or otherwise disposed of on the premises of a city cemetery, stating when available the name, sex, age, residence at death, place of birth, place of death and marital status of such deceased person, the cause and date of death, the date of burial, the lot and grave or vault number in which interred, and the name and address of the funeral director. The City Manager or his designee shall mark opposite the record of interment, any body disinterred and the date of disinterment.
(Code 1973, § 6-3)

Sec. 12-5. Application and approval required for disinterment.

A person who desires to have removed the remains of a person interred in any cemetery of the city shall apply in writing to the City Manager for permission, stating the name of the deceased, the date and cause of death, relationship of deceased to applicant, number of lot, vault or space of the interred, the owner thereof, and number of lot, vault or space (or name of cemetery, if elsewhere), in which the remains are to be reinterred, and reason for removal. No such permission for such disinterment shall be granted, nor shall such disinterment be made, until such application has been approved by the county health department and a burial-transit permit issued therefor.
(Code 1973, § 6-4)

Sec. 12-6. Second interment in same grave.

(a) Interments in single grave portions shall conform to the spaces, but nothing in this chapter shall be construed to prohibit or prevent the opening of a grave in which a previous interment has been made for the purpose of making a second interment therein.

(b) Second interments shall be allowed, provided the same shall be done with the written approval and consent of the owner of the lot or grave and the nearest of next of kin of the first interment, and with the approval and in a manner satisfactory to the City Manager of the cemetery in which the same is proposed to be made and provided further, that any person aggrieved by the determination of the City Manager may appeal to the City Council or his representative, whose determination shall be final and conclusive.
(Code 1973, § 6-5)

Sec. 12-7. Burials restricted to dead human bodies and cemeteries.

Only a dead human body may be buried in a city cemetery, and no person shall bury or cause to be buried any dead human body in any place within the city other than a city cemetery, in a church cemetery or in a cemetery licensed by the state burial association commissioner.
(Code 1973, § 6-6)

Sec. 12-8. Open during specified hours.

Cemeteries operated by the city shall be open to the public daily between the hours of 7:00 a.m. and 7:00 p.m.
(Code 1973, § 6-7)

Sec. 12-9. Requirements for purchase, transfer and use of cemetery lot or grave.

(a) *Price.* The council shall determine the purchase price for any cemetery lot or lots.

(b) *Procedure for purchase and payment.* Any individual desiring to purchase a cemetery lot or single grave portion shall contact the City Manager or his representative, who shall furnish them with the proper section and lot numbers. The purchaser shall then present the section and lot numbers to the city clerk's office with payment of the purchase price for the lot or portions purchased. The city clerk's office shall then furnish the purchaser with the appropriate deed therefor.

(c) *Interments for remuneration.* The owner of any cemetery lot or single grave opening in a city cemetery shall not permit or allow any interment therein for money or services.

(d) *Loss of deed.* In case of the loss or destruction of a cemetery deed, the city manager or his designee on proof satisfactory to him of such loss or destruction shall have issued a new deed executed to the original holder or his heirs, upon payment of the currently required fee.

(e) *Transfer of deed.* The transfer of a deed to any cemetery lot or single grave portions of a city cemetery by the owner thereof shall be binding and effective as to the city only when done as provided in this section. Any person desiring to transfer any cemetery lot or single grave portions to any individual shall present to the city clerk such person's deed thereto, together with the currently required transfer fee and a duly executed and notarized deed thereto from such person back to the city. The city clerk shall then present such written request, together with such transfer fee and such two deeds, to the city clerk, who shall retain the same and issue another deed for such cemetery lot or single grave portions to such designated grantee.

(1) The owner may exchange or swap a lot for another lot owned by the city by executing a deed to the city for his then owned lot, and the city will thereafter cause a deed to be executed to the owner for the lot for which the exchange or swap is made, subject to the transfer fees and any costs to be paid by the owner.

(2) If, on any date subsequent to such exchange, the owner desires to sell and reconvey the lot resulting from the exchange back to the city, the purchase price to be paid by the city shall be the

purchase price paid by the owner to the city for the original lot prior to the exchange.

(f) *Succession ownership on death.* In case of the death of the purchaser of a lot or single grave portion in a city cemetery, the ownership of the lot or portion shall be vested in the heirs of the purchaser. The heirs, executor or administrator of such deceased owner should notify the city clerk and obtain a new deed under the provisions of subsection (e) of this section.

(g) *Records of ownership.* The city clerk shall keep records showing the ownership of all cemetery lots or single grave portions in any city cemetery, including all changes in ownership by transfer or death when notified.

(h) *Maintenance fee.* If, at the time of interment, the person to be interred is a nonresident of the city, a maintenance fee established by the city council shall be due prior to interment.

(1) If the person to be interred resided in a health care facility at the time of death but, immediately prior to admission to such health care facility, the person to be interred was a resident of the city or was a taxpayer listed individually for ad valorem taxes in the property tax records of the city during the taxable year immediately preceding the proposed interment, the maintenance fee shall be waived.

(2) If the person to be interred was a property taxpayer or spouse of a property taxpayer listed individually for ad valorem taxes in the property tax records of the city during the taxable year immediately preceding the proposed interment, the maintenance fee shall be waived.

(3) If the person to be interred is related to the cemetery lot owner or a taxpayer in the following manner, the maintenance fee shall be waived:

a. A natural or adopted dependent child less than 22 years of age during the taxable year immediately preceding the proposed interment, with dependency to be established pursuant to the guidelines, codes

and standards of the Internal Revenue Service.

- b. The maintenance fee shall also be waived if the person to be interred was an employee of the city for a period of ten years continuously or is a dependent child of an employee.

(i) *City purchases.* The city may purchase a cemetery lot from any owner thereof at the price paid when purchased from the city.

(j) *Number of lots limited.* The city manager may limit the number of lots sold to any owner and/or the number of lots sold to any purchaser at one time and/or from time to time.
(Code 1973, § 6-8)

Sec. 12-10. Reversion of title to city; publication of notice.

(a) When any cemetery lot or single grave openings shall remain without any interment therein for 20 years or more since the last cemetery deed therefor was issued or since the last interment therein, whichever is later, and the owner of record shall have died or is not a resident of the city, and the whereabouts of such record owner or any relative by blood, marriage or adoption of such owner is not known by any member of the council, the title to such cemetery lot or single grave openings shall revert to the city when the conditions of subsection (b) of this section have been complied with.

(b) The city council shall cause notice to be published once a week for four successive weeks in a newspaper, having a circulation in the city meeting the requirements of state law for publication of legal notice, a notice setting forth the conditions of subsection (a) of this section, designating the cemetery lot or single grave openings, and stating that title thereto will revert to the city if prior to the expiration of 30 days from the last date of publication the record owner or a relative by blood, marriage or adoption of such owner does not appear and confirm to the city their claim of ownership thereto. If after such publication such record owner or relative does not appear and confirm such claim of ownership thereto, title to such cemetery lot or single grave openings shall revert to the city.
(Code 1973, § 6-9)

Sec. 12-11. Interment regulations; notice and hours.

(a) *Notice.* Arrangements for an interment in a city cemetery must be made at least 24 hours in advance of the time set for the funeral service.

(b) *Hours.* The hour of the funeral must be arranged so that the grave may be properly filled and all surplus ground cleaned away before 7:00 p.m. Funeral should not be no later than 4:00pm/

(c) *Permit and insurance required.* No person shall open or close a grave or make an excavation or cause the same to be done in any cemetery operated by the city without first having secured permission for such work from the city manager or his representative, and no such permission shall be granted unless such person shall then have in effect, and will have in effect with an insurance company licensed by the insurance commissioner of this state, public liability and property damage insurance, including completed operations coverage, of not less than one million dollars (\$1,000,000.00), and bodily injury of not less than five hundred thousand dollars (\$500,000.00) per person and not less than five hundred thousand dollars (\$500,000.00) per accident, covering acts and work to be performed under such permission. No such permission shall be granted unless a certificate of insurance or other satisfactory written evidence of the fact that such person has the above-required insurance coverage is filed with the city clerk. Grave openings and closings will be performed exclusively by the city or its authorized agents. (Amended 6-8-98, Adopted 7-1-98)

(d) *Depth of graves.* Every grave shall be of sufficient depth to provide for a minimum distance of two feet from the top of the graveliner or vault lid to the top of the grave at all points.
(Code 1973, § 6-10; Ord. of 7-13-92, § 2)

Sec. 12-12. Enclosures, curbing, maintenance and vehicles.

No enclosure or curbing shall be placed around any cemetery lot or part thereof in any section that may be opened or laid out in any city cemetery. Sand, gravel, crushed stone or similar material shall not be permitted on any lot or grounds. All graves shall be at ground level, flat and without a mound. Vehicles shall not be operated upon the grounds except in existing roads and driveways.

Sec. 12-13. Carrying flowers from cemeteries prohibited.

No person shall remove any flowers from any city cemetery without first obtaining permission from the city.

(Code 1973, § 6-16)

Sec. 12-14. Changing grades of lots; requirement.

Persons who do any work upon lots shall not raise or change the grade of same or make any changes without first getting the proper grade from the city.

(Code 1973, § 6-17)

Sec. 12-15. Ornaments prohibited.

Ornaments, furniture, glass vases, glass cases or any other glass or porcelain items, decorative flags, light fixtures, toys, wooden or any other articles on poles, watering cans or any other article that may be considered objectionable by the city are prohibited, and the city reserves the right to remove same without notice to the owner, any relative or other person. Exceptions to these rules are allowed at certain holidays, but items must be removed immediately after the holiday, or they will be removed by the city.

(Code 1973, § 6-20)

Sec. 12-16. Cemetery superintendent authorized to remove flowers and decorations.

The city's authorized representative shall remove all fresh flowers, permanent arrangements, and decorations whenever, in his opinion, it may be necessary or proper to do so. Under present policy – fresh flowers will be removed in one week. All permanent arrangements will be allowed to remain on graves for six weeks, unless they deteriorate prior to this period.

(Code 1973, § 6-21)

Sec. 12-17. Removal of rubbish; liability for damage.

Cemetery lot-owners who work on their cemetery lots shall remove all rubbish and excavated earth which they may take to such areas as shall be designated by the cemetery superintendent. Employers shall also be liable for any damage done by their employees to enclosures or other cemetery property.

(Code 1973, § 6-22)

Cross References: Solid waste, ch. 22.

Sec. 12-18. Signs prohibited.

No sign indicating that any cemetery lot or single grave openings are "for sale," and no signs, cards or advertisements of stonecutters or any other person shall be permitted in any city cemetery.

(Code 1973, § 6-23)

Secs. 12-19--12-45. Reserved.

ARTICLE II.

PERPETUAL CARE TRUST FUND*

* **Cross References:** Taxation and finance, ch. 26.

Sec. 12-46. Established.

A cemetery perpetual care trust fund is hereby established under the authority of G.S. 160A-347.

(Code 1973, § 6-25)

Sec. 12-47. Certain surplus revenue placed in fund.

Surplus revenue as determined by the city council from charges and fees and the sale of grave spaces shall be placed in the perpetual care trust fund.

(Code 1973, § 6-26)

Sec. 12-48. Expenditures.

The expenditure of moneys in the perpetual care trust fund may be made at any time or from time to time for all or part of the cost of acquisition, construction, reconstruction or enlargement of and extensions to properties used or useful in connection with city cemeteries.

(Code 1973, § 6-27)

Sec. 12-49. Interest from investments.

Any interest derived from investments of the perpetual care trust fund shall be transferred to the general fund for operation and maintenance of city cemeteries.

(Code 1973, § 6-28)

Sec. 12-50. Depository.

A bank shall be designated the depository in which moneys of the perpetual care trust fund shall be deposited.

(Code 1973, § 6-29)

Sec. 12-51. Withdrawals.

Any withdrawal of moneys in the perpetual care trust fund shall only be by a resolution adopted by the city council.

(Code 1973, § 6-30)

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Chapter 13
RESERVED

Chapter 14

ENVIRONMENT*

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Secs. 14-1--14-35. Reserved.

Article II. Nuisances

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Cross References: Hazardous materials and industrial waste, § 22-66 et seq.; wastewater pretreatment, § 30-186 et seq.
State Law References: Municipal authority to regulate and restrict the emission or disposal of substances or effluents that tend to pollute or contaminate the land, water or air, G.S. 160A-185.

ARTICLE I. IN GENERAL

Secs. 14-1--14-35. Reserved.

ARTICLE II. NUISANCES*

DIVISION 1. GENERALLY

Sec. 14-36. Violations.

Any person violating the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with section 1-11.
(Code 1973, § 13.1-10)

Sec. 14-37. Remedies.

The procedure set forth in this article shall be in addition to any other remedies that may exist under law to remedy the violations set forth in this article. Nothing in this article shall prevent the city from proceeding in a criminal action against any person violating its provisions.
(Code 1973, § 13.1-11)

Sec. 14-38. Illustrative enumeration.

The existence of any of the following conditions on any vacant lot or other parcel of land within the corporate limits is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:

- (1) The uncontrolled growth of weeds or grass to a height of 18 inches or more within 100 feet of any structure.
- (2) Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or which is inhabited by rats, mice, snakes or vermin of any kind which is or may be dangerous or prejudicial to the public health.
- (3) Any accumulation of ashes, refuse or rubbish or waste not in compliance with chapter 22 of this Code.

* **State Law References:** Municipal authority to abate public health nuisances, G.S. 160A-193.

- (4) Other provisions of this article to the contrary notwithstanding an abandoned motor vehicle, as defined in section 14-67, shall constitute a

public health nuisance only when it is found to be:

- a. A breeding ground or harbor for mosquitoes or other insects, snakes, rats or vermin of any kind;
- b. A point of growth of weeds and grass over 18 inches in height;
- c. A point of accumulation of stagnant water;
- d. A point of concentration of gasoline, oil, or other flammable or explosive materials;
- e. So located that there is a danger of the vehicle falling or turning over;
- f. A source of danger for children through entrapment in areas of confinement that cannot be opened from the inside or from exposed surfaces of metal, glass or other rigid materials; or
- g. In any other condition detrimental to the public health.

(5) Open wells.

(6) An accumulation of stagnant water causing or threatening to cause the inhabitation thereof by mosquitoes.

(7) Any condition detrimental to the public health which violates the rules and regulations of the county health department.

(Code 1973, § 13.1-1)

Sec. 14-39. Investigation of conditions.

The city inspector, upon notice from any person of the existence of any of the conditions described in section 14-38 shall make, or cause to be made by an official of the city or of the county health department, such investigation as may be necessary to determine whether, in fact, such conditions exist as to constitute a public nuisance.
(Code 1973, § 13.1-2)

Sec. 14-40. Order of abatement--Notice.

Upon a determination by the city code enforcement

officer that conditions constituting a public nuisance exist, the city code enforcement officer shall notify, by certified mail, the owner, occupant or person in possession of the premises in question of the conditions constituting such public nuisance and shall order the prompt abatement thereof within 5 days from the receipt of such written notice. (Code 1973, § 13.1-3)

Sec. 14-41. Same--Appeal.

Within seven days from receipt of the notice provided for in section 14-40, the owner, occupant or person in possession of the premises may request a hearing before the city council to appeal the finding of the city inspector that a public nuisance exists on the premises. The request for a hearing must be in writing and must be filed in the office of the city manager. The city manager shall fix a time for the hearings, and the initial abatement order shall be temporarily suspended pending such hearing. The hearing must be held by the city council within 31 calendar days following receipt of the request for hearing by the office of the city manager. At the hearing, the individual affected by the order shall be given the opportunity to present evidence to refute the findings which supported the abatement order. Upon completion of the hearing, the city council shall consider the evidence before it and shall either revoke the initial order, issue a final order which differs from the initial order or reinstate the initial order as a final abatement order. (Code 1973, § 13.1-4)

Sec. 14-42. Abatement by city--Conditions.

Upon the occurrence of either of the following conditions:

- (1) A hearing is requested and held as provided for in section 14-41 resulting in either a final order with modifications or the reinstatement of the initial order as a final order, and such order is not complied with within 15 days from adjournment of the hearing;
- (2) No hearing is requested or held, and the person having been ordered to abate such a public nuisance fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of such order;

the city inspector shall cause such condition to be removed or otherwise remedied by having employees of the city to go upon said premises and remove or otherwise abate such

nuisance under the supervision of an officer or employee designated by the city inspector. Any person who has been finally ordered to abate a public nuisance may within the time allowed by this article request the city in writing to remove such condition, the cost of which shall be paid by the person making such request. (Code 1973, § 13.1-5)

Sec. 14-43. Same--Charges.

The actual cost incurred by the city in removing or otherwise remedying a public nuisance shall be charged to the owner of such lot or parcel of land. It shall be the duty of the city finance director to mail a statement of such charges to the owner or other person in possession of such premises with instructions that such charges are due and payable within 30 days from the receipt thereof. (Code 1973, § 13.1-6)

Sec. 14-44. Unpaid charges to become lien.

If charges for the removal or abatement of a public nuisance are not paid within 30 days after the receipt of a statement of charges as provided for in section 14-43 such charge shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes, as provided in G.S. 160A-193. (Code 1973, § 13.1-7)

Sec. 14-45. Inspections.

Whenever it is necessary to make an inspection in the course of an investigation required by this article, the city inspector or his authorized representative is hereby empowered to enter upon the property upon which there is alleged to exist a public nuisance at any reasonable time to inspect the same, but only if the consent of the owner, occupant or person in possession of the premises is freely given or a search or inspections warrant is obtained.

- (1) If such property be occupied, he shall first present credentials to the occupant and request entry, explaining his reasons therefor;
- (2) If such property be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the property, present proper credentials and request entry, explaining

his reasons therefor; and

- (3) If such entry is refused or cannot be obtained because the owner or other person having charge or control of the property cannot be found after due diligence, the city inspector or his authorized representative shall obtain a warrant to conduct a search or inspection of the property.

(Code 1973, § 13.1-9)

Secs. 14-46--14-65. Reserved.

DIVISION 2. ABANDONED, NUISANCE AND JUNKED MOTOR VEHICLES*

* **State Law References:** Regulation of abandonment of junked motor vehicles, G.S. 160A-303.2.

Sec. 14-66. Administration.

The police department and the city manager or their duly authorized representative shall be responsible for the administration and enforcement of this division. The police department shall be responsible for administering the removal and disposition of vehicles determined to be abandoned on the public streets and highways within the city, and on property owned by the city. The city manager shall be responsible for administering the removal and disposition of abandoned, nuisance or junked motor vehicles located on private property. The city may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store, and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this division and applicable state laws. Nothing in this division shall be construed to limit the legal authority or powers of officers of the city police department and fire department in enforcing other laws or in otherwise carrying out their duties.
(Code 1973, § 12-1)

Sec. 14-67. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned vehicle means, as authorized and defined in G.S. 160A-303, a vehicle which:

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

Authorizing official means the supervisory employee of the police department or the city manager, respectively, designated to authorize the removal of vehicles under the provisions of this division.

Junked motor vehicle means a vehicle that:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self-propelled or moved in the manner in which it originally was intended to move;
- (3) Is more than five years old and appears to be worth less than \$100.00; or
- (4) Does not display a current license plate and creates an unsightly image.

Motor vehicle or *vehicle* means all machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

Nuisance vehicle means a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests;
- (2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height;
- (3) A point of collection of pools or ponds of water;

- (4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;
- (5) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.;
- (6) So situated or located that there is a danger of it falling or turning over;
- (7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind;
- (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or
- (9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council.

(Code 1973, § 12-2; Ord. of 9-8-97)

Cross References: Definitions generally, § 1-2.

Sec. 14-68. Prohibited; removal authorized.

- (a) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be abandoned.
- (b) Upon investigation, proper authorizing officials of the city may determine that a vehicle is an abandoned vehicle and order the vehicle removed.
(Code 1973, § 12-3)

Sec. 14-69. Nuisance vehicle unlawful; removal authorized.

- (a) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee, or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.
- (b) Upon investigation, the city manager may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle, and order the vehicle removed.
(Code 1973, § 12-4)

Sec. 14-70. Junked vehicle regulated; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.

(b) It shall be unlawful to have more than one junked motor vehicle on the premises of public or private property. Single, permitted junked motor vehicle must strictly comply with the location and concealment requirements of this section.

(c) It shall be unlawful for any owner, person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked vehicle is located to fail to comply with the locational requirements or the concealment requirements of this section.

(d) Subject to the provisions of subsection (e) of this section, upon investigation, the city manager may order the removal of a junked motor vehicle after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following among other relevant factors may be considered:

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

(e) The concealment or enclosure of a junked motor vehicle may be permitted as follows:

- (1) One junked motor vehicle, in its entirety, can be located in the rear yard as defined

by the city zoning ordinance if the junked motor vehicle is entirely concealed from public view from a public street and from abutting premises by an acceptable covering.

- a. The city code enforcement officer has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision.
- b. The covering must remain in good repair and must not be allowed to deteriorate.
- c. The covering or enclosure must be compatible with the objectives of this division.

- (2) Any other junked motor vehicle must be kept in a garage or building structure that provides a complete enclosure so that the junked motor vehicle cannot be seen from a public street or abutting property. A garage or building structure means either a lawful, nonconforming use or a garage or building structure erected pursuant to the lawful issuance of a building permit and which has been constructed in accordance with all zoning and building code regulations.

(Code 1973, § 12-5)

Sec. 14-71. Removal of vehicles; pretowing notice requirements.

- (a) Except as set forth in section 14-72, an abandoned, nuisance or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of a nuisance vehicle or a junked motor vehicle, if the names and mailing addresses of the registered owner or person entitled to the possession of the vehicle, or the owner, lessee, or occupant of the real property upon which the vehicle is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first class mail. The person who mails the notice shall retain a written record to show the name and address to which mailed, and the date mailed. If such names and addresses cannot be ascertained if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield

or some other conspicuous place on the vehicle a notice indicating that the vehicle will be removed by the city on a specified date, no sooner than seven days after the notice is affixed. The notice shall state that the vehicle will be removed by the city on a specified date, no sooner than seven days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

- (b) With respect to abandoned vehicles on private property, nuisance vehicles and junked motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is abandoned, a nuisance vehicle or in the case of a junked motor vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens, such appeal shall be made to the city council in writing, heard at the next regularly scheduled meeting of the city council, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

(Code 1973, § 12-6)

Sec. 14-72. Exceptions to prior notice requirement.

The requirement that notice be given prior to the removal of an abandoned, nuisance or junked motor vehicle may, as determined by the authorizing official, be omitted in those circumstances where there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare. Such findings shall, in all cases, be entered by the authorizing official in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include:

- (1) *Abandoned on streets.* For vehicles left on the public streets and highways, the city council hereby determines that immediate removal of such vehicles may be warranted when they are:
 - a. Obstructing traffic;
 - b. Parked in violation of an ordinance prohibiting or restricting parking;
 - c. Parked in a no stopping or standing zone;
 - d. Parked in loading zones;

- e. Parked in bus zones; or
- f. Parked in violation of temporary parking restrictions imposed under this code.

- (2) *Other abandoned or nuisance vehicles.* With respect to abandoned or nuisance vehicles left on city-owned property other than the streets and highways, and on private property, such vehicles may be removed without giving prior notice only in those circumstances where the authorizing official finds a special need for prompt action to protect and maintain the public health, safety and welfare. By way of illustration and not of limitation, such circumstances include vehicles parked in such a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

(Code 1973, § 12-7)

Sec. 14-73. Removal of vehicles; post-towing notice requirements.

(a) Any abandoned, nuisance or junked motor vehicle which has been ordered removed may, as directed by the city, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform such services for the city. Whenever such a vehicle is removed, the authorizing city official shall immediately notify the last known registered owner of the vehicle, such notice to include the following:

- (1) The description of the removed vehicle;
- (2) The location where the vehicle is stored;
- (3) The violation with which the owner is charged, if any;
- (4) The procedure the owner must follow to redeem the vehicle; and
- (5) The procedure the owner must follow to request a probable cause hearing on the removal.

(b) The city shall attempt to give notice to the vehicle owner by telephone; whether or not the owner is reached by telephone, written notice, including the information set forth in subsections (a)(1) through (a)(5) of this section, shall also

be mailed to the registered owner's last known address, unless this notice is waived in writing by the vehicle owner or his agent.

(c) If the vehicle is registered in this state, notice shall be given within 24 hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within 72 hours from the removal of the vehicle.

(d) Whenever an abandoned, nuisance or junked motor vehicle is removed, and such vehicle has no valid registration or registration plates, the authorizing city official shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information set forth in subsections (a)(1) through (a)(5) of this section.

(Code 1973, § 12-8)

Sec. 14-74. Right to hearing before sale or final disposition.

After the removal of an abandoned vehicle, nuisance vehicle or junked motor vehicle, the owner or any other person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the vehicle. A request for hearing must be filed in writing with the county magistrate designated by the chief district court judge to receive such hearing requests. The magistrate will set the hearing within 72 hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of G.S. 20-222.

(Code 1973, § 12-9)

Sec. 14-75. Redemption of vehicle during proceedings.

At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fee, including any storage charges, or by posting a bond for double the amount of such fees and charges to the tow truck operator or towing business having custody of the removed vehicle. Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this division.

(Code 1973, § 12-10)

Sec. 14-76. Sale and disposition of unclaimed vehicle.

Any abandoned, nuisance or junked motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of such a vehicle shall be carried out in coordination with

the city and in accordance with G.S. 44A-1 et seq.
(Code 1973, § 12-11)

Sec. 14-77. Conditions on removal of vehicles from private property.

As a general policy, the city will not remove a vehicle from private property if the owner, occupant or lessee of such property could have the vehicle removed under applicable state law procedures. In no case will a vehicle be removed by the city from private property without a written request of the owner, occupant or lessee, except in those cases where a vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the city manager. The city may require any person requesting the removal of an abandoned, nuisance or junked motor vehicle from private property to indemnify the city against any loss, expense or liability incurred because of the removal, storage or sale thereof.

(Code 1973, § 12-12)

Sec. 14-78. Protection against criminal or civil liability.

No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, nuisance or junked motor vehicle, for disposing of such vehicle as provided in this division.

(Code 1973, § 12-13)

Sec. 14-79. Exceptions.

Nothing in this division shall apply to any vehicle which is:

- (1) Located in a bona fide automobile graveyard or junkyard as defined in G.S. 136-143, in accordance with the Junkyard Control Act, G.S. 136-141 et seq.;
- (2) In an enclosed building;
- (3) On the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise; or
- (4) In an appropriate storage place or depository maintained in a lawful place and manner by the city.

(Code 1973, § 12-14)

Sec. 14-80. Unlawful removal of impounded vehicle.

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the city any vehicle which has been impounded pursuant to the provisions of this division unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

(Code 1973, § 12-15)

Secs. 14-81--14-100. Reserved.

Sec. 14-90. Noise – loud, disturbing and unnecessary noise.

The creation of any unreasonably loud, disturbing and unnecessary noise is prohibited. Noise of such character, intensity and duration as to be detrimental to the life or health of any individual is prohibited. For the state law as to authority of city to regulate noise, see G.S. 160A-184.

Sec. 14 – 91. Same – acts construed as noise.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this ordinance, but such enumeration shall not be deemed exclusive, namely:

(a) *Blowing horns.* The sounding of any horn or signal devise of any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching, apparently out of control; or if in motion, only as a danger signal, after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal devise for any unnecessary are reasonable period of time.

(b) *Vehicle sirens and gongs.* The use of any gong or sirens upon any vehicle, other than police, fire, or other emergency vehicle.

(c) *Radios, phonographs, etc.* The playing of any radio, phonograph or other devises in such manner or with such volume, particularly during the hours between 10:00p.m. and 7:00a.m., as to annoy or disturb the quiet, comfort or repose of any person or persons in any dwelling, hotel or other type of residence.

(d) *Pets.* The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the comfort and repose of any person in the vicinity.

Sec. 14-92. Offenses Miscellaneous.

(a) *Use of vehicles.* The use of any automobile, motorcycle or other vehicle so out of repair, so loaded in such a manner as to create loud or unnecessary grating, grinding, rattling or other noise, and such loud and unnecessary noise caused by operation of automobiles, motorcycles or other vehicles unless the noise created thereby is effectively muffled and reduced.

(b) *Blowing whistles.* The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger.

(c) *Exhaust discharge.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or motorboat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(d) *Devices using compressed air.* The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced.

(e) *Noises near schools, courts and hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning or court while the same is in session, or within one hundred and fifty feet of any hospital, which unreasonably interferes with the working of such institution; provided, that conspicuous signs are displayed in such street indicating that the same is a school, court, or hospital street.

(f) *Loading and unloading operations.* The creation of loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates and containers.

Sec. 14-93. Violations.

Violations of any section of this ordinance shall be punishable by penalties established by Council on May 2000 under Section 1-11 Chapter 1.. Said fines shall be placed into the General Operating Funds of the City of Cherryville, N.C.

This ordinance became effective June 14, 1999.

ARTICLE III.

TRANSPORTATION OF RADIOACTIVE SUBSTANCES*

* **Cross References:** Hazardous materials and

industrial waste, § 22-66 et seq.; streets, sidewalks and other public places, ch. 24; traffic and vehicles, ch. 28.

State Law References: Municipal authority to regulate the possession, storage, use or conveyance of radioactive substances, G.S. 160A-183.

Sec. 14-101. Purpose.

The purpose of this article is to provide minimum standards and regulations insuring the safe shipment and transportation of radioactive substances through the city and the surrounding one mile radius.
(Code 1973, § 20.1-1)

Sec. 14-102. Definitions.

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

Curie means an expression of the quantity of radiation in terms of the number of atoms which disintegrate per second. A curie is that quantity of radioactive material which decays such that 37 billion atoms disintegrate per second.

Large quantity radioactive substances means a quantity the aggregate radioactivity of which exceeds that specified in 10 Code of Federal Regulations (CFR) part 71, entitled Packaging of Radioactive Material for Transport, section 71.4(f).

Millicurie means 0.001 of a curie.

Motor vehicle means any vehicle defined as a motor vehicle in state law.

Person means any individual, partnership or corporation engaged in the transportation of passengers or property, as common, contract or private carrier or freight forwarder, as those terms are used in the Interstate Commerce Act, as amended.

Radioactive substance means any material or combination of materials which spontaneously emit ionizing radiation. Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material, and in which the radioactivity is essentially uniformly distributed, are not considered to be radioactive substances within the meaning of this article.
(Code 1973, § 20.1-2)

Cross References: Definitions generally, § 1-2.

Sec. 14-103. Penalties.

Any person who violates any provision of this article shall be guilty of a general misdemeanor and shall be punished in accordance with section 1-11.
(Code 1973, § 20.1-7)

Sec. 14-104. Permit required.

(a) A permit issued by the city manager or his designated representative shall be required for the shipping or transportation of the following radioactive materials by motor vehicle into, within, through or out of the city or the immediate one mile surrounding area:

- (1) Plutonium isotopes in any quantity and form exceeding two grams or 20 curies, whichever is less;
- (2) Uranium enriched in the isotope U-235 exceeding 25 atomic percent of the total uranium content in quantities where the U-235 content exceeds one kilogram;
- (3) Any elements with the atomic number 89 or greater, the activity of which exceeds 20 curies;
- (4) Spent reactor fuel elements or mixed fission products associated with such fuel elements the activity of which exceeds 20 curies;
- (5) Large quantity radioactive materials;
- (6) Any quantity, arrangement and packaging combination of fissile material specified by the United States Nuclear Regulatory Commission as a Fissile Class III shipment in 10 CFR Part 71 entitled Packaging of Radioactive Materials for Transport, section 71.4(d)(3); or
- (7) Any shipment or transportation of radioactive material that is required by the appropriate regulating agency to be accompanied by an escort for safety reasons.

(b) This section shall not apply to radioactive materials shipped or transported by or for the United States

Government for military or security purposes or which are related to national defense in time of war.

(c) The chief of police or acting chief must also approve the permit with regard to specific transportation routes, schedules and duration within the area referred to in this article.

(d) The provisions of this chapter shall likewise equally apply to nonmotor vehicular transportation as well as motor vehicular transportation.
(Code 1973, § 20.1-3)

Sec. 14-105. Issuance of permit.

The city manager or his designated representative shall not issue a permit to any person for the shipment or transportation of those radioactive substances specified in this article, unless:

- (1) There is a showing that the radioactive material has been or will be containerized and packaged, and all warning labels affixed to the outer container holding the radioactive material and the motor vehicle transporting such material, in conformity with the regulations of the United States Department of Transportation, United States Nuclear Regulatory Commission or other related federal or state agencies regardless of whether the shipment is being made intracity, intrastate or interstate; and
- (2) There is a showing that the shipment or transportation of radioactive substances is necessitated by urgent public policy or national security or military interests transcending public safety and health concerns of the citizens of the city and the surrounding area.

(Code 1973, § 20.1-4)

Sec. 14-106. Notice.

When those radioactive substances requiring a permit as specified in this article are to be shipped or transported into, within, through or out of the city or the one-mile area, the shipper, carrier or person otherwise responsible shall first notify the city manager, or his designated representative, at least 15 days prior to the date of shipment. The notice shall include the date of shipment, type and quantity of radioactive substances involved, method of transportation, route, starting point, destination,

anticipated duration in the area, and such other information as the city manager or his designated representative may require. Nothing in this section shall be construed as requiring the disclosure of any defense information or restricted data as defined in the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974, as amended, in time of war.

(Code 1973, § 20.1-5)

Sec. 14-107. Bond.

The city manager or his designated representative may require the person proposing to transport radioactive substances as referred to in this article to post a cash bond sufficient to equal twice the estimated damage to persons and/or property which could reasonably be anticipated to result, directly or indirectly, from any accident arising, directly or indirectly, from the transportation of the radioactive substances referred to in this article.

(Code 1973, § 20.1-6)

FLOOD DAMAGE PREVENTION ORDINANCE

October 9, 2006

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

Municipal: The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental the responsibility units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the City Council of Cherryville, North Carolina, does ordain as follows:

SECTION B. FINDINGS OF FACT.

- (1) The flood prone areas within the jurisdiction of **Cherryville** 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 of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION C. STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (2) require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES.

The objectives of this ordinance are:

- (1) to protect human life and health;
- (2) to minimize expenditure of public money for costly flood control projects;
- (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) to minimize prolonged business losses and interruptions;

- (5) to minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (6) to help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (7) to ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

ARTICLE 2. DEFINITIONS.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"Accessory Structure (Appurtenant Structure)" means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

"Addition (to an existing building)" means an extension or increase in the floor area or height of a building or structure.

"Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

"Area of Shallow Flooding" means a designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

"Area of Special Flood Hazard" see "Special Flood Hazard Area (SFHA)"

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Base Flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation (BFE)" means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal or State or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard", establishes the "Regulatory Flood Protection Elevation".

"Building" see "Structure"

"Chemical Storage Facility" means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

"Development" means 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.

"Disposal" means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Elevated Building" means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Encroachment" means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

"Existing Manufactured Home Park or Manufactured Home Subdivision" means 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) was completed before the original effective date of the floodplain management regulations adopted by the community.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters; and/or
- (2) the unusual and rapid accumulation of runoff of surface waters from any source.

"Flood Boundary and Floodway Map (FBFM)" means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

"Flood Insurance" means the insurance coverage provided under the National Flood Insurance Program.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

"Flood Insurance Study (FIS)" means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

"Flood Prone Area" see "Floodplain"

"Floodplain" means any land area susceptible to being inundated by water from any source.

"Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations.

"Floodplain Development Permit" means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

"Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

"Floodplain Management Regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Flood Zone" means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

"Freeboard" means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. The Base Flood Elevation plus the freeboard establishes the "Regulatory Flood Protection Elevation".

"Functionally Dependent Facility" means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

"Hazardous Waste Facility" means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

"Highest Adjacent Grade (HAG)" means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

"Historic Structure" means any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) certified or preliminarily determined by the Secretary of 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;
- (c) individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program"; or
- (d) certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program"

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

"Lowest Adjacent Grade (LAG)" means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

"Lowest Floor" means lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Market Value" means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

"Mean Sea Level" means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

"New Construction" means structures for which the "start of construction" commenced on or after the effective date of the original version of the community's Flood Damage Prevention Ordinance and includes any subsequent improvements to such structures.

"Non-Encroachment Area" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

"Post-FIRM" means construction or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map for the area.

"Pre-FIRM" means construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map for the area.

"Principally Above Ground" means that at least 51% of the actual cash value of the structure is above ground.

"Public Safety" and/or "Nuisance" means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"Recreational Vehicle (RV)" means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (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.

"Reference Level" is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone A1-A30, AE, A, A99 or AO.

"Regulatory Flood Protection Elevation" means the "Base Flood Elevation". In "Special Flood Hazard Areas" where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE. In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least three (3) feet above the highest adjacent grade.

"Remedy a Violation" means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Salvage Yard" means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

"Solid Waste Disposal Facility" means, as defined in NCGS 130A-290(a)(35), any facility involved in the disposal of solid waste.

"Solid Waste Disposal Site" means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

"Special Flood Hazard Area (SFHA)" means the land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

"Start of Construction" includes substantial improvement, and means 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 means either the first placement of permanent construction of a structure on a site, such as the pouring of 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 the building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market 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 correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official 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.

"Variance" is a grant of relief from the requirements of this ordinance.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation (WSE)" means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

"Watercourse" means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdiction (ETJ) of Cherryville.

SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM) and or Digital Flood Insurance Rate Maps (DFIRM), for Gaston County dated March 3, 2003, which are adopted by reference and declared to be a part of this ordinance.

Municipal: In addition, upon annexation to Cherryville or inclusion in the Extra-Territorial Jurisdiction (ETJ), the Special Flood Hazard Areas identified by the Federal Emergency Management Agency (FEMA) and/or produced under the Cooperating Technical State agreement between the State of North Carolina and FEMA as stated above, for the Unincorporated Areas of Gaston County, with accompanying maps and other supporting data are adopted by reference and declared to be a part of this ordinance.

SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with Article 3, Section B of this ordinance.

SECTION D. COMPLIANCE.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

SECTION E. ABROGATION AND GREATER RESTRICTIONS.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION F. INTERPRETATION.

In the interpretation and application of this ordinance, all provisions shall be:

- (a) considered as minimum requirements;
- (b) liberally construed in favor of the governing body; and
- (c) deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION G. WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Cherryville, Gaston County, or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION H. PENALTIES FOR VIOLATION.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, 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 \$50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Cherryville or Gaston County from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 4. ADMINISTRATION.

SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR.

The Gaston County Floodplain Administrator or a designee as approved by the Gaston County Manager, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance.

SECTION B. FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.

- (1) **Application Requirements.** Application for a Floodplain Development Permit shall be made to the floodplain administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:
- (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - ii) the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
 - iii) flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;
 - iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
 - v) the Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C(11 & 12); or Article 5, Section D;
 - vi) the old and new location of any watercourse that will be altered or relocated as a result of proposed development;
 - vii) certification of the plot plan by a registered land surveyor or professional engineer.
 - (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
 - i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be flood-proofed; and
 - iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;
 - (c) If floodproofing, a Floodproofing Certificate (*FEMA Form 81-65*) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.
 - (d) A Foundation Plan, drawn to scale,, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
 - i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls);

- ii) Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(d), when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30;
- (e) Usage details of any enclosed areas below the regulatory flood protection elevation.
- (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
- (g) Copies of all other Local, State and Federal permits required prior to floodplain development permit issuance (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.)
- (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure Article 5, Sections B (6 & 7) of this ordinance are met.
- (i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

- (a) A description of the development to be permitted under the floodplain development permit.
- (b) The Special Flood Hazard Area determination for the proposed development per available data specified in Article 3, Section B.
- (c) The regulatory flood protection elevation required for the reference level and all attendant utilities.
- (d) The regulatory flood protection elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
- (g) The flood openings requirements, if in Zones A, AO, AE or A1-30.
- (h) Limitations of below BFE enclosure uses (if applicable). (i.e., Parking, Building Access and Limited Storage only).

(3) **Certification Requirements.**

- (a) Elevation Certificates
 - i) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

- ii) An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. . Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
 - iii) A final as-built Elevation Certificate (*FEMA Form 81-31*) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (b) Floodproofing Certificate
- If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (c) If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per Article 5, Section B(3).
 - (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
 - (e) Certification Exemptions. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
 - i) Recreational Vehicles meeting requirements of Article 5, Section B(6)(a);
 - ii) Temporary Structures meeting requirements of Article 5, Section B(7); and
 - iii) Accessory Structures less than 150 square feet meeting requirements of Article 5, Section B(8).

SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Advise permittee that additional Federal or State permits (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section E are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with Article 4, Section B(3).
- (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with Article 4, Section B(3).
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with Article 4, Section B(3).
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Article 4, Section B(3) and Article 5, Section B(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section D(2)(b), in order to administer the provisions of this ordinance.
- (12) When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (13) When the lowest ground elevation of a parcel or structure in a Special Flood Hazard Area is above the Base Flood Elevation, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.
- (14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.

- (15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (17) Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (18) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (19) Follow through with corrective procedures of Article 4, Section D.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).

SECTION D. CORRECTIVE PROCEDURES.

- (1) Violations to be Corrected: When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (a) that the building or property is in violation of the Flood Damage Prevention Ordinance;
 - (b) that a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
 - (c) that following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

- (3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one-hundred-eighty (180) calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.
- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

SECTION E. VARIANCE PROCEDURES.

- (1) The **Flood Control Appeal Board** as established by **Gaston County**, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (3) Variances may be issued for:
 - (a) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (b) functionally dependant facilities if determined to meet the definition as stated in Article 2 of this ordinance, provided provisions of Article 4, Section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages.
 - (c) any other type of development, provided it meets the requirements stated in this section.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - (a) the danger that materials may be swept onto other lands to the injury of others;
 - (b) the danger to life and property due to flooding or erosion damage;
 - (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) the importance of the services provided by the proposed facility to the community;
 - (e) the necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependant facility, where applicable;
 - (f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) the compatibility of the proposed use with existing and anticipated development;

- (h) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (k) 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.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) Conditions for Variances:
- (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - (b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (d) Variances shall only be issued prior to development permit approval.
 - (e) Variances shall only be issued upon:
 - i) a showing of good and sufficient cause;
 - ii) a determination that failure to grant the variance would result in exceptional hardship; and
 - iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION.

SECTION A. GENERAL STANDARDS.

In all Special Flood Hazard Areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, 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. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.
- (9) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities are specifically not allowed and are not subject to variance procedures of this ordinance.. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to Article 4, Section B(3) of this ordinance.
- (11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

- (13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

SECTION B. SPECIFIC STANDARDS.

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 4, Section C(11 & 12), the following provisions, in addition to Article 5, Section A, are required:

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Article 2 of this ordinance.
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Article 2 of this ordinance. Structures located in A, AE and A1-30 Zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Article 5, Section H(3). A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Article 4, Section B(3), along with the operational and maintenance plans..
- (3) Manufactured Homes.
 - (a) New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Article 2 of this ordinance.
 - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by engineer certification, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
 - (c) All enclosures or skirting below the lowest floor shall meet the requirements of Article 5, Section B(4)(a), (b), and (c)..
 - (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the floodplain administrator and the local Emergency Management coordinator.
- (4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
 - (a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

- (b) shall be constructed entirely of flood resistant materials all the way to the top of any enclosure below the lowest floor above the regulatory flood protection elevation;
- (c) shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria;
 - i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
 - v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(5) Additions/Improvements.

- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - i) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (b) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
- (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - i) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (d) Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

(6) Recreational Vehicles. Recreational vehicles shall either:

- (a) be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or

(b) meet all the requirements for new construction.

(7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval;

- (a) a specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;
- (b) the name, address, and phone number of the individual responsible for the removal of the temporary structure;
- (c) the time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- (d) a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
- (e) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

(8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- (b) Accessory structures shall not be temperature-controlled;
- (c) Accessory structures shall be designed to have low flood damage potential;
- (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (e) Accessory structures shall be firmly anchored in accordance with Article 5, Section A(1);
- (f) All service facilities such as electrical shall be installed in accordance with Article 5, Section A(4); and
- (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with Article 5, Section B(4)(c)..

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B(3).

SECTION C. RESERVED.

SECTION D. STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to Article 5, Sections A and B, shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

- (2) The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:
- (a) If Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article 4, Section C(11 & 12).
 - (b) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Article 3, Section B to be utilized in implementing this ordinance.
 - (c) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated to or above the regulatory flood protection elevation, as defined in Article 2.

SECTION E. STANDARDS FOR RIVERINE FLOODPLAINS WITH BFE BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.

Along rivers and streams where BFE data is provided but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards outlined in Article 5, Sections A and B; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS.

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated that:
 - (a) the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the floodplain administrator prior to issuance of floodplain development permit, or
 - (b) a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- (2) If Article 5, Section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - (a) the anchoring and the elevation standards of Article 5, Section B(3); and
 - (b) the no encroachment standard of Article 5, Section F(1).

SECTION G. STANDARDS FOR AREAS OF SHALLOW FLOODING (ZONE AO).

Located within the Special Flood Hazard Areas established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Article 5, Section A, all new construction and substantial improvements shall meet the following requirements::

- (1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of **three (3) feet**, above the highest adjacent grade; or at least two feet above the highest adjacent grade plus a freeboard of **three (3) feet** if no depth number is specified.
- (2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Article 5, Section H(1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as per Article 4, Section B(3) and Article 5, Section B(2).
- (3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

ARTICLE 6. LEGAL STATUS PROVISIONS.

SECTION A. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted April 6, 1998, as amended October 6, 2003, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Cherryville enacted on April 6, 1998, as amended October 6, 2003, which are not reenacted herein are repealed.

SECTION B. EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

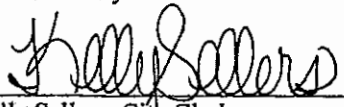
SECTION C. EFFECTIVE DATE.

This ordinance shall become effective upon adoption.

SECTION D. ADOPTION CERTIFICATION.

I hereby certify that this is a true and correct copy of the flood damage prevention ordinance as adopted by the City Council of Cherryville, North Carolina, on the 9 day of October, 2006.

WITNESS my hand and the official seal of Cherryville, this the 16 day of November, 2006.



Kelly Sellers, City Clerk

Chapter 16

FIRE PREVENTION AND PROTECTION*

Sec. 16-1. Riding on fire apparatus.

Sec. 16-2. Interfering with volunteer firefighter en route to fire.

Cross References: Buildings and building regulations, ch. 8.

State Law References: Fire protection in municipalities, G.S. 160A-291 et seq.

Sec. 16-1. Riding on fire apparatus.

It shall be unlawful for any person, except a member of the fire department, to ride on any truck, vehicle or apparatus of the department while going to or returning from a fire, except by permission of the chief of the fire department.

(Code 1973, § 9-5)

Cross References: Traffic and vehicles, ch. 28.

Sec. 16-2. Interfering with volunteer firefighter en route to fire.

It shall be unlawful for any person to interfere in any manner with a volunteer firefighter en route to a fire if such firefighter is prominently displaying warning lights.

(Code 1973, § 9-2)

Chapter 17

COMMUNITY APPEARANCE STANDARDS

Division I. General

Sec. 17-01	Purpose
Sec. 17-02	Authority
Sec. 17-03	Title

Division I. Department of Community Appearance Standards

Sec. 17-04.1	General
Sec. 17-04.2	Appointment
Sec. 17-04.3	Deputies
Sec. 17-04.4	Conflict of Interest
Sec. 17-04.5	Liability

Division II. Administration and Enforcement

Sec. 17-05.1	General
Sec. 17-05.2	Right-of-entry
Sec. 17-05.3	Abatement
Sec. 17-05.4	Interference with personnel
Sec. 17-05.5	Responsibility of owner and agents

Division III. Definitions

Sec. 17-06	Definitions

Division IV. General Requirements

Sec. 17-07.1	Accumulations generally
Sec. 17-07.2	Junk
Sec. 17-07.3	Open spaces
Sec. 15-07.4	Exterior property areas
Sec. 15-07.5	Weeds, grass, noxious vines, and other vegetation
Sec. 15-07.6	Fences, retaining walls or similar landscape features
Sec. 15-07.7	Swimming pools, hot tubs, and fountains
Sec. 15-07.8	Landscape pools, and or ponds.

Division V. Penalties

Sec. 15-08.1	General
Sec. 15-08.2	Notice of a declared nuisance and citations
Sec. 15-08.3	Citations
Sec. 15-08.4	Disposition of proceeds
Sec. 15-09	Right of Appeal

Existing:

**Chapter 17
COMMUNITY APPEARANCE STANDARDS
DIVISION III**

Section. 17 – 06. Definitions

For the purpose of this code, the following terms shall have the respective meaning ascribed to them all other terms shall have the meaning ascribed in Webster's Dictionary.

ADD:

Boat, a vehicle of any size used for traveling on water.

Recreational Vehicle, a vehicle that often has a bathroom, kitchen, and beds for use during travel and camping.

Livestock Trailer, an unpowered vehicle designed to be towed by a motor vehicle commonly used to transport animal livestock and goods.

DIVISION IV. General Requirements

ADD:

Section 17-07.9 – Boats, (except for kayaks and canoes), Recreational Vehicles, and Livestock Trailers

Parking or storage of boats (whether mounted on trailers or unmounted), recreational vehicles, or livestock trailers, except for loading and unloading activities is not permitted within the front yard in any Residential Land Use District (R-40 to R-O). Screening from the adjacent properties is encouraged.

No more than two (2) boats, recreational vehicles, and livestock trailers, or any combination of those mentioned will be allowed unless stored within an enclosed structure out of view from surrounding properties.

Livestock Trailers may be allowed in the side yard areas if the lot is located within the R-40 zoning district that is designated as an agricultural use.

Article II. Community Appearance Standards Code

Section 17-01 Purpose.

It is hereby found and determined that areas subject to the zoning jurisdiction of the city have need for a property maintenance code, because of the existence of conditions herein determined to be unlawful, constitute a visual blight and detriment upon the surrounding neighborhood and create substantial and unreasonable interferences with the reasonable and lawful use and enjoyment of other premises in the neighborhood, or such conditions inhibit property values, deter tourism, interfere with the public health, safety and general welfare or otherwise discourage the happiness, comfort and emotional stability of the citizenry.

Section 17-02 Authority.

Adopted pursuant to NCGS 160A-381, and applied within the corporate limits of the City of Cherryville.

Section 17-03 Title.

This ordinance shall be known as the 'Community Appearance Standards Code of the City of Cherryville', and maybe referred to as the 'Community Appearance Code'. In accordance with the prescribed procedures of the City of Cherryville and with concurrence of the City Manager, the Zoning Administrator shall have the authority to appoint a deputy code official, other related technical officers, inspectors and other employees.

Division I. Department of Community Appearance Standards

Section 17-04.1 General.

The department of community appearance standards is hereby created and the executive official in charge thereof shall be known as the Zoning Administrator.

Section 17-04.2 Appointment

The Zoning Administrator shall be appointed by the City Manager; and the Zoning Administrator shall not be removed from office except for cause and after full opportunity to be heard of specific and relevant charges by and before the appointing authority.

Section 17-04.3 Deputies.

In accordance with the prescribed procedures of the City of Cherryville and with concurrence of the City Manager, the Zoning Administrator shall have the authority to appoint a

deputy code official, other related technical officers, inspectors and other employees.

Section 17-04.4 Conflict of Interest.

An official or employee connected with the enforcement of this code, shall not be engaged in or indirectly connected with, the furnishing of labor, materials or appliances for the construction, alteration or maintenance of a building or the premises, or the preparation of construction documents thereof, unless that person is the owner of the building; nor shall such officer or employee engage in any work that conflicts with official duties or with the interest of the department.

Section 17-04.5 Liability

The Zoning Administrator, officer or employee charged with the enforcement of this code, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties.

Section 17-05.1 Administration and Enforcement.

General. The Zoning Administrator shall enforce the provisions of this code, and is hereby authorized to use either city equipment or private contractors as his or her discretion.

Section 17-05.2 Right-of-entry.

Officers, employees or representatives of the city shall have the authority to enter upon property, to obtain an administrative search warrant if necessary, to issue a notice of violation, to enter upon or authorize an agent to enter upon and clean up the premises if there is no compliance with the notice of violation, and file a lien against the property in the event that the city seeks to secure the cost of bringing the property into compliance with this Code through the collection of costs as unpaid taxes.

Section 17-.05.3 Abatement.

If the owner, occupant or tenant of any premises fails to comply with a notice of violation of the community standards code within five (5) business days upon receipt of notice, the city shall have the authority to enter onto such land and clean the same; and to charge the cost or expense of such action, plus any administrative cost, against the owner, occupant and/or tenant. In the event, such charge or expense shall constitute a lien against such property, which

lien may be collected in the same manner as the collection of a tax lien.

Section 17-05.4 Interference with personnel.

It shall be unlawful for any person to interfere, harass or otherwise impede any city inspector, employee or agent carrying out official duties, when acting within the scope of official duties, or when such inspector, employee or agent has authority to conduct an investigation under the authority of a lawful issued administrative search warrant and when carrying out the enforcement provisions of this code after notice of violation has been issued and the time for compliance has expired.

Section 17-05.5 Responsibility of owner and agents.

The owner, agent, tenant, occupant, or lessee of all residential, commercial, industrial, institutional or governmental establishments shall be responsible for compliance with this code. "Owner, agent, occupant, tenant, or lessee," as used in this section, shall mean anyone owning and/or occupying a dwelling, building or premises for seven (7) or more consecutive days and who is, thus, also responsible for correcting the violation.

Section 17-06 Definitions.

For the purpose of this code, the following terms shall have the respective meanings ascribed to them; all other terms shall have the meaning ascribed in Webster's Dictionary.

Building Material: Any materials or other substances accumulated as a result of repairs or additions to existing buildings, construction of new buildings, demolition of existing buildings or moving a building.

Declared Nuisance: Anything that causes injury or damage to the health or life of any person, is a detriment to the surrounding property values, or that causes an offensive odor.

Foul/Noxious Odor: Odors emanating from garbage, stagnate water, and animal or human waste.

Garbage: The by-product of animal or vegetable food stuffs resulting from the handling, preparation, cooking and consumption of food, or other matter which is subject to decomposition, decay, putrefaction, or the generation of noxious or foul odors, or which during or after decay may serve as a breeding or feeding material for flies, other insects, or animals.

Junk: Any item, including, but not limited to, dilapidated furniture, appliances, machinery, equipment, building material, automobile parts, tires, or other items which are either wholly or partially rusted, wrecked, junked, dismantled, or in an inoperative condition.

Litter: All discarded man-made materials including, but not limited to, building materials, business trash, garbage, household trash, industrial waste, refuse, yard trash and other solid waste.

Noxious Vines and/or Weeds: Includes but is not limited to, kudzu, honeysuckle, poison oak, poison ivy, wisteria and sumac.

Occupant: Any person who occupies a dwelling or leases a building for seven (7) or more consecutive days.

Premises: The private property including the yard and up to the edge of pavement or gravel of any public street.

Private Property: Property owned by any person, not a political entity, including, but not limited to, yards, grounds, driveways, entrances, or passageways, parking areas, storage areas, vacant land, bodies of water and including sidewalks, grass strips, one-half of alleys, curbs, or right-of-ways up to the edge of the pavement or gravel of any public street.

Open Spaces: Areas of private property or portions thereof that are open to the exterior, including building openings or residential dwelling units, such as carports or porches, and any other exterior portions or properties ordinarily exposed to the outside and/or public view, including front, side and rear yards.

Improved Property: Property upon which any building or structure is located, or any public street.

Division IV. General Requirements

Section 17-07.1 General Requirements.

Accumulations generally. It shall be unlawful for any person to maintain premises, including vacant lots or land upon which trash, garbage, appliances, dead animals, or miscellaneous refuse, or any substance which causes foul odor, is permitted or caused to accumulate in any manner which is or may become a nuisance, or which may cause injury to the health or welfare or residents in the vicinity of which may damage neighboring property. The owner and/or occupant of such property shall remove any substance, vegetation or solid waste or correct any such

Condition within five (5) business upon receipt of notice from the city.

Section 17-07.2 Junk.

It shall be unlawful for any person to have on their premises materials that would create a littered condition such as dilapidated furniture, appliances, machinery, equipment, building material, automobiles parts, tires, or other items which are in a wholly or partially rusted, wrecked, junked, dismantled, or inoperative condition, which are completely enclosed within a building or dwelling.

Section 17-07.3 Open Spaces.

It shall be unlawful for any person to place deteriorated, dilapidated, or abandoned household or office furniture in an open space. As well as any products with jagged edges of metal or glass.

Section 17-07.4 Exterior Property Areas.

Private sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

Section 17-07.5 Weeds, Grass, Noxious Vines, and other Vegetation.

It shall be unlawful for the owner and/or occupant of improved property or vacant lots to cut grass, weeds, or overgrowth is of a height greater than eighteen (18) inches, or to permit the property to serve as a breeding place for mosquitoes, as a refuge for rats and snakes, as a collecting place for trash and litter, or as a fire hazard, any of one (1) of which situations is declared to be a nuisance. Vacant lots (excluding wooded property) adjacent to improved property shall be kept no more than eighteen (18) inches in height and shall be cut within one hundred (100) feet of such improved property, the rest of which shall be cut when the height exceeds twenty four (24) inches.

Section 17-07.6 Fences, Retaining Walls or similar Landscape features.

It shall be unlawful for the owner and/or occupant of property to fail to maintain fences, retaining walls or similar landscape features in good structural condition and appearance, or free from deterioration. Wooden or other fence features subject to deterioration or weathering shall be properly maintained to retard deterioration or provide protection from the weather. Deterioration features shall be replaced or repaired, or if not otherwise required to be

maintained by the City of Cherryville's Zoning Ordinance, shall be completely removed.

Section 17-07.7 Swimming Pools, Hot Tubs, and Fountains.

It shall be unlawful for the owner or occupant of the property to fail to maintain swimming pools, hot tubs, and/or fountains in a clean and sanitary condition, and in good repair.

Section 17-07.8 Landscape Pools, and or Ponds.

It shall be unlawful for the owner or occupant of the property to fail to maintain landscape pools and or ponds in a condition so as to prevent noxious odors, breeding grounds for mosquitoes, and/or a refuge for snakes.

Division V. Penalties

Section 17-08.1 General.

The City may take one or more of the following courses of action in enforcing any violation of this code.

- (a) A civil penalty of twenty-five dollars (\$25.00) may be levied against any person who violates any section of this code.
- (b) The violator may be charged with a misdemeanor and be subject to a penalty, pursuant NCGC 14-4.
- (c) The city may apply to the appropriate court for an injunction and order of abatement which would require that a violator correct any unlawful condition relating to this code, on such person's property.
- (d) A lien may be levied against the property owner for the cost of any abatement by city personnel or private contractor as provided by the authority of the city.
- (e) If the owner fails to pay the penalties and/or cost of the abatement within thirty (30) days, the city may seek relief of the bill, by turning the bill over to a collection agency as provided by the authority of the city.

Section 17-08.2 Notice of a declared nuisance and citations.

A written notice will be delivered or sent by certified mail to the owner and/or his agents in the event that he or she violates this code. It shall be unlawful for any person, upon

receipt of the notice, to fail to comply within five (5) business days upon receipt of this notice.

Section 17-08.3 Citations.

Enforcement officers are empowered to issue citations to any person if there is a reasonable cause to believe that the person has violated any provision of this code as referred to in Section 1-11 (g) in the City of Cherryville Code of Ordinances. These citations may be delivered in person to the violator or mailed certified mail. The citation shall direct the violator to pay the citation within five (5) business days upon receipt of notice. Such violation must be corrected by the time the citation is paid. Otherwise another citation will be issued. After the second citation is issued and the property owner does not correct the violation within the time allotted the city will then start the abatement process and all cost incurred will be charged against the property owner. If the property owner then fails to pay the penalties and/or cost of the abatement the city will take further course of action as referred to in Section 15-54.01 of this Code.

Section 17-08.4 Disposition of proceeds.

All proceeds received from the collection of penalties shall be deposited into the general fund.

Section 17-09 Right of Appeal

If a ruling of the Zoning Administrator is questioned, the aggrieved party may appeal such ruling to the Cherryville City Council. Said appeal shall be made in writing to the Zoning Administrator within ten (10) business days upon receipt of the notice of violation and shall pay a \$100.00 appeal fee.

Adopted this 11th day of February, 2002.

Chapter 18

LAW ENFORCEMENT*

- Sec. 18-1. Supervision of regular and special police officers.
- Sec. 18-2. Duties of officers.
- Sec. 18-3. Duties of chief.

* **Cross References:** Officers and employees, § 2-86 et seq.
State Law References: Police generally, G.S. 160A-281--160A-289.

AN ORDINANCE AMENDING CHAPTER 18, THE CODE OF ORDINANCES OF THE CITY OF CHERRYVILLE

Amendment of Section 18-1: Supervision of Regular and Special Reserve Police Officers.

Regular and ~~special-reserve~~ police officers shall be under the supervision and direction of the chief of police.

Addition of Section 18-4: Reserve Law Enforcement Personnel.

- 1) Reserve law enforcement personnel may be hired from time to time by the city. Such personnel shall be regarded in all respects as part-time employees and shall be subject to the city's personnel policy.
- 2) Duly appointed reserve law enforcement Officers shall, while training and while performing duties on behalf of the city incidental to their appointment, be entitled to worker's compensation benefits to the same extent as other city employees. Compensation payments to such personnel shall be based upon the entrance salary of a regular city police Patrol Officer at the time of the injury.
- 3) Upon approval of the council, a reserve Police Officer who is disabled by injuries received in the line of duty for the Police Department shall be eligible for the following benefits:
 - (a) Such reserve Police Officer shall receive the full salary equivalent to that paid to full-time Police Patrol Officers at the entry level for the first 60 working days of disability, provided that any payment which the employee receives for this period under worker's compensation laws shall be deducted from the sum paid by the city.
 - (b) If the disability continues beyond 60 working days, the reserve Police Officer may be granted additional benefits under the conditions outlined in subdivision (3 a) upon the recommendation of the city manager and with the approval of the city council.
- 4) The city shall be entitled to the same immunities with respect to the action of reserve Police Officers in the performance of their duties or training or otherwise, to which it is entitled with respect to the actions of regular city Police Officers in the performance of their duties.

This the 28th day of May, 2013.

(SEAL)

Attest:

City Clerk



Mayor

Sec. 18-1. Supervision of regular and special police officers.

Regular and special police officers shall be under the supervision and direction of the chief of police.

(Code 1973, § 16-3)

Sec. 18-2. Duties of officers.

It shall be the duty of the police officers to:

- (1) Especially preserve public peace, prevent crimes, detect and arrest offenders and suppress riots and unlawful gatherings which obstruct the free passage of public streets, sidewalks, parks and public places.
- (2) Protect the rights of persons and property.
- (3) Guard the public health.
- (4) Preserve order at elections and all public meetings and assemblages.
- (5) Regulate the movements of vehicles in the streets, bridges, parks, public squares and highways.
- (6) Provide proper police attendance at fires.
- (7) Prevent as far as possible any injury to city property and buildings, streets and sidewalks.
- (8) Serve all processes issued to them.
- (9) Perform any and all other duties that may be assigned to them either by the city council or chief of police.
- (10) Carefully observe and inspect all places of public amusement, all places of business having licenses to carry on such business and to suppress and restrain all unlawful and disorderly conduct or practices therein.
- (11) Enforce and preserve the laws and ordinances in the city.
- (12) Arrest all persons guilty of violating any provision of this Code, other ordinances of the city or state law.

(Code 1973, § 16-4)

State Law References: Powers and duties of police officers, G.S. 160A-285.

Sec. 18-3. Duties of chief.

The chief of police shall:

- (1) Have charge of the police department.
- (2) Assign such duties to the police officers as he thinks best for the good order of the city.
- (3) See that all police officers faithfully perform their duties.
- (4) Make such investigations as may be required by the city manager.
- (5) Cause to be served all such processes and other notices as may be required by the city manager.
- (6) Suggest such rules and regulations to the city manager as he may deem necessary to maintain discipline and efficiency in the police department.

(Code 1973, § 16-11)

State Law References: Municipal authority to appoint a chief of police, G.S. 160A-281.



Chapter 19
RESERVED

Chapter 20

OFFENSES AND MISCELLANEOUS PROVISIONS*

Sec. 20-1. Begging on streets or public places.

Sec. 20-2. Disorderly conduct.

Sec. 20-3. Schools.

Sec. 20-4. Use of weapons or missiles.

Sec. 20-5 - Tobacco Products Prohibited

State Law References: State criminal code, G.S. 14-1 et seq.

20-1. Begging on streets or public places.

It shall be unlawful for any person to engage in begging on the streets or in public places.
(Code 1973, § 14-2)

State Law References: Authority of city to regulate begging, G.S. 160A-179.

Sec. 20-2. Disorderly conduct.

(a) Any person who shall do or engage in any of the following shall be guilty of disorderly conduct:

- (1) Any person who shall act in a violent or tumultuous manner toward another, whereby any person is placed in danger of safety of his life, limb or health.
- (2) Any person who shall act in a violent or tumultuous manner toward another, whereby public property or property of any other person is placed in danger of being destroyed or damaged.
- (3) Any person who shall endanger lawful pursuits of another by acts of violence or threats of bodily harm.
- (4) Any person who shall cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another or public property.
- (5) Any person who shall assemble or congregate with another or others and cause, provoke or engage in any fight or brawl.
- (6) Any person who shall collect in bodies or in crowds and engage in unlawful activities.
- (7) Any person who shall assemble or congregate with another or others and engage or attempt to engage in gaming.
- (8) Any person who shall frequent any public place and obtain money from another by an illegal and fraudulent scheme, trick, artifice or device, or attempt to do so.
- (9) Any person who assembles with another or

others and engages in any fraudulent scheme, device or trick to obtain any valuable thing in any place or from any person, or attempts to do so.

- (10) Any person who frequents any place where gaming or the illegal sale or possession of alcoholic beverages, narcotics or dangerous drugs is practiced, allowed or tolerated.
- (11) Any person who shall use fighting words directed towards any person who becomes outraged and thus creates turmoil.
- (12) Any person who shall assemble or congregate with another or others and do bodily harm to another.
- (13) Any person who shall, by acts of violence, interfere with another's pursuit of a lawful occupation.
- (14) Any person who shall congregate with another or others in or on any public way so as to halt the flow of vehicular or pedestrian traffic and refuses to clear such public way when ordered to do so by a peace officer or other person having authority.
- (15) Any person who damages, befoils or disturbs public property or the property of another so as to create a hazardous, unhealthy or physically offensive condition.
- (16) Any person who shall discharge a water pistol, spray paint, silly string, paper streamer, popper, or other such devices which may damage, befoul, or disturb public property or the property of another so as to create a hazardous, unhealthy, or physically offensive condition.

(b) Any person convicted of disorderly conduct, as defined in this section, shall be punished as provided in section 1-11.
(Code 1973, § 14-5)

Sec. 20-3. Schools.

(a) It shall be unlawful for any person to create any disturbance detrimental to the discipline of any school

within the city.

(b) It shall be unlawful for any person to enter upon the grounds of any school in the city, except during school hours, or to enter the building during school hours or at any other time unless he has permission of some school official.

(Code 1973, § 14-13)

Sec. 20-4. Use of weapons or missiles.

(a) *Discharge.* It shall be unlawful for any person to discharge a firearm, or bow and arrow or hurl any missile of any kind within the city limits of the city.

(b) *Possession.* Except as provided in subsection (c) of this section, all persons are prohibited from possessing weapons as defined in G.S. 14-269 in city-owned nonresidential buildings as defined in G.S. 14-54(c), their appurtenant premises and parks.

(c) *Exceptions.* The prohibition set forth in subsection (b) of this section shall not apply to the following persons:

- (1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons.
- (2) Civil officers of the United States while in the discharge of their official duties.
- (3) Officers and soldiers of the militia and the national guard when called into actual service.
- (4) Sworn law enforcement officers.
- (5) County animal control officers.
- (6) Employees of the city, a utility company or a contractor to the city, may possess tools approved by their employer so long as such tools are not used as a weapon.
- (7) Persons possessing a written permit from the chief of police to possess weapons for ceremonial purposes or funerals.

(d) *Posting of notice.* A conspicuous notice shall be posted at each entrance to any property set forth in

this section, indicating that possession of weapons or carrying a concealed handgun is prohibited. This indication may be given by use of the approved symbol.

(e) *Penalty for violation.* Any person in violation of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 1-11.

(f) *Weapons declared contraband.* Weapons possessed in violation of this section are hereby declared to be contraband. The chief of police or his designee shall hold such weapon for disposal pursuant to court order. In the absence of any court order, the weapon shall be destroyed. (Code 1973, § 14-14; Ord. of 9-12-94; Ord. of 12-11-95)

Cross References: City declared bird sanctuary, § 6-1.

State Law References: Authority to regulate, restrict or prohibit the discharge of firearms, G.S. 160A-189.



10-1-11



**AN ORDINANCE TO PROHIBIT SMOKING AND THE USE OF OTHER TOBACCO
PRODUCTS IN THE CITY OF CHERRYVILLE BUILDINGS AND VEHICLES AND ON
ALL CITY OF CHERRYVILLE GROUNDS**

Chapter 20 20-5

WHEREAS, according to the Centers for Disease Control and Prevention (CDC), tobacco use and secondhand smoke exposure are leading preventable causes of illness and premature death in North Carolina and the nation; and

WHEREAS, on January 2, 2010, "An Act to Prohibit Smoking In Certain Public Places And Certain Places of Employment", North Carolina Session Law 2009-27, became effective, authorizing local governments to adopt and enforce ordinances "that are more restrictive than State law and that apply in local government buildings, on local government grounds, in local vehicles, or in public places;" and

WHEREAS, in 2006, a report issued by the United States Surgeon General stated that the scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke, and that secondhand smoke has been proven to cause cancer, heart disease, and asthma attacks in both smokers and nonsmokers; and

WHEREAS, the CDC advises that all individuals with coronary heart disease or known risk factors for coronary heart disease should avoid all indoor environments that permit smoking; and

WHEREAS, in air quality tests, concentrations of secondhand smoke in vehicles have been found to be far greater than in any other micro-environments tested, including smoke-free homes, smokers' homes, smoke-filled bars, and outdoor air – even with a vehicle's windows open and its fan set on high; and

WHEREAS, research indicates that, during active smoking, outdoor levels of secondhand smoke may be as high as indoor levels and may pose a health risk for people in close proximity (such as those sitting beside someone on a park bench or children accompanying a smoking parent or guardian); and

WHEREAS, tobacco is a recognized carcinogen in humans, and health risks associated with the use of tobacco products include myocardial infarction, stroke, and adverse reproductive outcomes; and

WHEREAS, the City of Cherryville is committed to providing a safe and healthy workplace in all City of Cherryville facilities for its employees and a safe and healthy environment for the visiting public; and

WHEREAS, the City of Cherryville wishes to minimize the harmful effects of tobacco use among municipal employees and eliminate secondhand smoke exposure for employees and the public in and on those buildings, vehicles, and grounds controlled by the City of Cherryville; and

WHEREAS, this Council finds and declares that, in order to protect the public health and welfare, it is in the best interest of the citizens of the City of Cherryville to adopt an ordinance prohibiting smoking and the use of tobacco products in all municipal buildings, vehicles, grounds, parks and recreation areas.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Cherryville, that the Tobacco Free, Smoke Free Ordinance be regulated as follows:

Smoke Free Tobacco Free Ordinance

PROHIBITION OF SMOKING AND THE USE OF TOBACCO PRODUCTS IN CITY BUILDINGS, VEHICLES, GROUNDS AND PARKS AND PROHIBITION OF SMOKING AND THE USE OF E-CIGARETTES IN PUBLIC PLACES

Section 1. Authority.

This ordinance is enacted pursuant to North Carolina General Statute 130A-498 and 160A-174(a).

Section 2. Definitions.

The following definitions are applicable to this ordinance.

1. "City building". – A building owned, leased as lessor, or the area leased as lessee and occupied by the City of Cherryville.
2. "City vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by the City of Cherryville and assigned permanently or temporarily to its employees, agencies, institutions, or facilities for official City of Cherryville business.
3. "E-cigarette". – Any electronic oral device that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution or any other substance, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.
4. "Employee". – A person who is employed by the City of Cherryville, or who contracts with the city or a third person to perform services for the city, or who otherwise performs services for the city with or without compensation.
5. "Grounds". – An unenclosed area owned, leased, or occupied by the City of Cherryville.
6. "Local Health Department". The district health department, public health authority, or county health department, the jurisdiction of which includes the City of Cherryville.
7. "City parks system". – Any tract of land or body of water comprising part of the City of Cherryville's parks, playgrounds, recreation areas, greenways, or trails.

8. "Universal 'No Smoking and Use of Tobacco Products Prohibited' Symbol". – Symbol consisting of a pictorial representation of a burning cigarette and a tobacco product enclosed in a red circle with a red bar across it.
9. "Universal 'No Smoking' Symbol" – Symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.
10. "Public place". – An enclosed area to which the public is invited or permitted.
11. "Enclosed area". – An area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.
12. "Smoking". The use or possession of a lighted cigarette, lighted cigar, lighted pipe or any other lighted tobacco product.
13. "Tobacco product" Any product containing or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, or ingested by any other means, including but not limited to cigarettes; e-cigarettes; cigars; little cigars; snuff; and chewing tobacco. A tobacco product excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Section 3. Areas in Which Smoking and the Use of Tobacco Products are Prohibited.

- (a) Smoking and the use of tobacco products are prohibited:
 - (1) In City buildings;
 - (2) In City vehicles;
 - (3) On City grounds;
 - (4) On the grounds of the City parks system; and
 - (5) In the City buildings located in the City park system
- (b) The prohibition on smoking and the use of tobacco products in the places listed in section (a) above includes those times when they are being used for private events.

Section 4. Areas in Which Smoking and the Use of E-cigarettes are Prohibited.

- (a) Smoking and the use of e-cigarettes are prohibited:

In all enclosed areas of public places within the City, excluding those places identified in NCGS 130A-498(b1) as being exempt from smoking restrictions, including certain tobacco shops, premises of tobacco manufacturers and growers, smoking guest rooms in lodging establishments, certain cigar bars, private clubs, and live production sets.

- (b) The prohibition on smoking and the use of e-cigarettes in the places listed in section (a) above includes those times when they are being used for private events.

Section 5. Implementation Requirements.

- (a) The City and persons who manage, operate, or control a public place shall post signs that meet all the requirements in Section 6 of this ordinance.
- (b) The City and persons who manage, operate, or control a public place shall remove all ashtrays and other smoking receptacles from its buildings and grounds, except for ashtrays and receptacles for sale and not intended for use on the premises.
- (c) The person in charge of the City building, vehicle, grounds, or parks system or public place or his or her designee, shall direct a person who is smoking or using a tobacco product in a prohibited area to cease and, if the person does not comply, shall contact the City of Cherryville police department.

Section 6. Signage.

The signs required by Section 5 must:

- (a) State in English the applicable prohibition for the area (e.g. smoking and the use of tobacco products are prohibited) and include the applicable universal symbol (e.g., the "No Smoking and Use of Tobacco Products Prohibited" symbol).
- (b) Be of sufficient size to be clearly legible to a person of normal vision, and be conspicuously posted.
- (c) Be posted at the entrance to each City building and in other locations within the building reasonably calculated to inform employees and the public of the prohibition.
- (d) Be posted in each City vehicle in areas visible to passengers, provided that their placement does not interfere with the safe operation of the vehicle. If the vehicle is used for undercover law enforcement operations, a sign is not required to be placed in the vehicle.
- (e) Be posted on City grounds in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.
- (f) Be posted at the entrance to buildings in the City parks system;
- (g) Be posted on the grounds in the City parks system in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.
- (h) Be posted at the entrance to each enclosed public place and in other locations within the enclosed public place reasonably calculated to inform employees and the public of the prohibition.

Section 7. Enforcement and Penalties.

- (a) *Penalty for Violation.* Following oral or written notice by the person in charge of an area described in Sections 3 or 4, or his or her designee, failure to cease smoking or using tobacco products constitutes an infraction punishable by a fine of not more than fifty dollars (\$50.00). A citation may be issued by a sworn law enforcement officer. Conviction of an infraction under this section has no consequence other than payment of a penalty, and no court costs may be assessed.
- (b) *Additional Sanctions for Employees.* In addition to any penalty under subsection (a), employees of the City who violate this ordinance shall be subject to disciplinary action consistent with the city's human resources policies.

(c) Violations by persons who manage, operate, or control a public place. A local health director may take the following actions and may impose the following administrative penalty on a person who manages, operates, or controls a public place and fails to comply with the provisions of the ordinance.

- (1) First violation –Written notice of the person’s first violation and notification action to be taken in the event of subsequent violations.
- (2) Second violation –Written notice of the person’s second violation and notification of administrative penalties to be imposed for subsequent violations.
- (3) Third and subsequent violations –Impose an administrative penalty of not more than two hundred dollars (\$200). Each day on which a violation occurs may be considered a separate and distinct violation.

Section 8. Public Education.

The City of Cherryville shall engage in an ongoing program to explain and clarify the purposes and requirements of this ordinance to employees and citizens affected by it and to guide operators and managers in their compliance with it. In doing so, the City may rely upon materials and information provided by the local health department.

Section 9. Severability; Conflict of Laws.

If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance that can be given separate effect and to that end the provisions of this ordinance are declared to be severable. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 10. Effective Date.

This ordinance shall become effective on January 1, 2018.

Adopted this the 9 day of October 2017.



Paige Green, CMC, NCCMC, City Clerk



H. L. Beam, III, Mayor

(SEAL)

Chapter 21
RESERVED

Chapter 22

SOLID WASTE*

Article I. In General

- Sec. 22-1. Definitions.
- Sec. 22-2. Prohibited disposal of wastes generally.
- Sec. 22-3. Waste matter which is subject to scattering.
- Sec. 22-4. Transportation of garbage and other refuse.
- Sec. 22-5. Depositing debris in catch basins, manholes or drains.
- Secs. 22-6--22-35. Reserved.

Article II. Collection and Disposal

- Sec. 22-36. Permit required to engage in contracted services.
- Sec. 22-37. Collection practices.
- Sec. 22-38. Regulations relating to containers.
- Sec. 22-39. Storage of refuse.
- Sec. 22-40. Precollection practices.
- Sec. 22-41. Container collections, special collections.
- Sec. 22-42. Large rocks, tree stumps, tree, hedge and shrubbery cuttings, etc.
- Sec. 22-43. Solid and liquid wastes the city will not collect.
- Secs. 22-44--22-65. Reserved.

Article III. Hazardous Materials and Industrial Wastes

- Sec. 22-66. Hazardous materials.
- Sec. 22-68. Penalties.
- Sec. 22-67. Industrial wastes.

*

Cross References: Buildings and building regulations, ch. 8; removal of rubbish from cemeteries, § 12-17.

State Law References: Municipal authority to require the use of solid waste collection services, G.S. 160A-317(b); authority contract with private solid waste collection firms, G.S. 160A-324.

ARTICLE I. IN GENERAL

Sec. 22-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal and agricultural wastes means, principally, the manure and crop residue from various agricultural pursuits including dairying and raising of livestock and poultry. Animal waste also includes, in addition to items mentioned above, wastes from stables, kennels, pet pens, chicken coops, veterinary establishments and the like.

Ashes means the residue from the burning of wood, coal, coke and other combustible material in homes, stores, institutions and small industrial establishments for the purposes of heating, cooking and disposing of combustible waste material. Ashes are usually composed of a mixture of fine powdery residue, cinders, clinkers and small portions of unburned or partially burned fuel or other materials. Ashes shall contain no live embers or other burning materials.

Building rubbish means any materials or other substances accumulated as a result of repairs or additions to existing buildings, construction of new buildings, demolition of existing buildings or moving of buildings, including but not limited to bricks, stone, concrete, wood, lumber, siding shingles or roofing shingles of any type, etc.

Contracted services means any tree or shrubbery trimming resulting from work performed by landscaping or tree service contractors or other commercial workmen, whether full-time or part-time, including, but not limited to land clearing work. Work performed by the residential owner, or owner's immediate family, or other person without remuneration is not included.

Dead animals means those animals that die naturally or from disease or are killed accidentally. Condemned animals or parts from slaughterhouses or similar places are not included in this item.

- (1) *Small dead animals.* Dogs, cats, rabbits, squirrels, chickens, rats and other similar animals.
- (2) *Large dead animals.* Horses, cows, goats, sheep, hogs and other similar animals.

Declared nuisance means anything that causes injury or damage to the health or life of any person or that causes an offensive odor.

Garbage means the by product of animal or vegetable foodstuffs, resulting from the handling, preparation, cooking and serving of food, or other matter which is subject to decomposition, decay, putrefaction or the generation of noxious or offensive gases or odors, or which during or after decay may serve as breeding or feeding material for flies, other insects or animals.

Hazardous refuse means materials such as paint, poison, acids, caustics, chemicals, infected materials, offal, fecal matter and explosives and any other material declared hazardous by the U.S. EPA or any other responsible agency.

Household trash means any waste accumulation of paper, sweepings, dust, rags, bottles, cans or other matter of any kind, other than garbage, which is usually attendant to housekeeping.

Industrial waste means all waste, including solids, semisolids, sludges and liquids, created by factories, processing plants or manufacturing enterprises.

Junk means any item, including, but not limited to, dilapidated furniture, appliances, machinery, equipment, building materials, automobile parts, tires, or other items which are either in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition.

Litter means all illegally discarded manmade materials including, but not limited to, building materials, business trash, garbage, household trash, industrial waste, refuse, yard trash and other solid wastes.

Multiresidential unit means any duplex, apartment, group of apartments or condominiums or housing units designed for or occupied by more than one family.

Normal use (roll-out container)--Business means placement of any variety of both combustible and noncombustible solid waste materials from businesses; including such items as plastic, waste paper, rags, sweepings and similar waste materials ordinarily accumulated in general business operations. This list shall not include oil, oil cans, paint/paint thinners, etc.

Normal use (roll-out container)--Residential means placement of any variety of both combustible and noncombustible solid waste materials from households;

including such items as plastic, waste paper, rags, sweepings and similar waste materials ordinarily accumulated around a house.

Private property means property owned by any person, not a political entity, including, but not limited to, yards, grounds, driveways, entrances of passageways, parking areas, storage areas, vacant land, bodies of water and including sidewalks, grass strips, one-half of alleys, curbs or right-of-ways up to the edge of the pavement of any public street.

Refuse means solid waste consisting of garbage, household trash or business trash.

Rollcart means a plastic, mobile, top-loading, residential refuse container of 90-gallon capacity compatible to the city collection equipment.

Single residential unit means any dwelling place designed for or occupied by one family.

Weeds and grass means weeds and grass in excess of 12 inches in height. Weeds and grass on heavily wooded lots where equipment cannot maneuver on the lot because of the density are not included in this definition.

Yard trash means accumulation of lawn, grass, or shrubbery cuttings or clippings, bushes, limbs and dry leaf rakings free of dirt, rocks, large branches and bulky or noncombustible material.

(Ord. of 2-10-92, § 17-1)

Cross References: Definitions generally, § 1-2.

Sec. 22-2. Prohibited disposal of wastes generally.

(a) It shall be unlawful for any person to dump, throw or otherwise deposit upon any city street or sidewalk or in any public place not designated for such purpose any scrap paper, bottles, cans, glass, rags, tires, feathers, building material scraps, tree and shrubbery trimmings, liquid wastes, lubricating or fuel oil, flammable or combustible wastes or any other trash, refuse or debris.

(b) It shall be unlawful for any person to obstruct or cause to be obstructed the free flow of water in, over, along, upon or through any drainageway in any public street or other public way or in any creek, stream or other natural drainage course within the city limits by depositing any trash, refuse, tree or shrubbery trimmings, building material scraps or other matter therein.

(c) It shall be unlawful for any person to

dump, deposit or cause any gasoline, fuel oil, Nephro or other flammable liquid, or any wastes containing a toxic or poisonous substance, or any lubricating oil, grease or detergent to drain into any drainage ditch, street gutter, culvert or other drainageway in any public street or other public way or in any creek, stream or other natural drainage course within the city limits. It shall also be illegal to place any type lubricating oil, or other above named materials in any container provided by the city for garbage pick up.

(d) No person shall throw, drop or deposit, or cause to be thrown, dropped or deposited on any land in the city, vacant or occupied, including specifically streets, alleys, sidewalks or other public and semipublic areas or in any waters under jurisdiction of the city, any wastes, including but not limited to refuse, garbage, ashes, rubbish, dead animals or fish, paper, drinking cups, broken glass, tacks, brush, grass, weeds, and anything injurious to health. If any person, while transporting or hauling or causing to be transported or hauled, such rubbish, material, earth excavation, coal or other material, shall throw, drop or deposit, or cause to be thrown, dropped or deposited, such rubbish, or material from the body of a vehicle, in violation of the provisions of this subsection, such person must daily clean up and remove such rubbish or material in a manner satisfactory to the director of public works, failing which the department may clean up and remove such rubbish and material, and the city may collect the cost of such cleaning up and removal from such person.

(Ord. of 2-10-92, § 17-2)

Sec. 22-3. Waste matter which is subject to scattering.

Except as provided in article II of this chapter, it shall be unlawful for any person to deposit or permit to accumulate any waste matter or refuse of any description which is subject to scattering by animals or the elements of nature on that part of any property which is adjacent to a street or public place. This section shall not prohibit the burning of trash on one's own property when approved and permits are issued.

(Ord. of 2-10-92, § 17-3)

Sec. 22-4. Transportation of garbage and other refuse.

No swill, slops, garbage, bones, offal, kitchen waste or refuse shall be transported through the city streets of the city except in watertight containers with tightfitting covers.

(Ord. of 2-10-92, § 17-4)

Sec. 22-5. Depositing debris in catch basins, manholes or drains.

No person shall throw, drop or deposit leaves, shrubs, grass clippings or any other debris into any catch basin, manhole or drainage ditch or structure in the city. (Ord. of 2-10-92, § 17-5)

Secs. 22-6--22-35. Reserved.

ARTICLE II.

COLLECTION AND DISPOSAL*

* **State Law References:** Regulation of the placing of trash, refuse and garbage within municipal limits, G.S. 160A-303.1.

Sec. 22-36. Permit required to engage in contracted services.

A permit will be required for any contracted services. (Ord. of 2-10-92, § 17-6)

Sec. 22-37. Collection practices.

(a) Industrial waste shall be collected, removed and disposed of by the operator of the factory, plant or enterprise creating or causing the same in accordance with applicable provisions of this Code.

(b) Building rubbish, including items from large scale inside work, such as carpet, padding, etc., shall be collected, removed, and disposed of by the contractor or person constructing, repairing or demolishing any building, or in their failure to do so, by the owner of the property.

(c) No refuse shall be collected where refuse receptacles cannot be serviced by sanitation personnel without unlocking, opening or reaching over a door, gate, or similar obstacle, encountering a porch, encountering a dog, or otherwise being denied reasonable access by parked vehicles, yard tools, equipment or similar object. (Ord. of 2-10-92, § 17-7; Ord. of 3-2-92, § 1; Ord. of 6-8-92, § 1)

Sec. 22-38. Regulations relating to containers.

(a) Every person owning or occupying a single-family or a multifamily residential unit shall store all garbage and refuse in containers so as to eliminate wind driven debris and unsightly litter in and about their premises.

(b) Each residential unit, not using dumpster service, shall use at least one roll-out container so long as such containers are provided by the city. Additional containers, if needed, may be obtained, when supplies permit. Each container will remain the property of the city. The container shall not be moved from the residence where assigned. The maximum number of roll-out containers allowed per residence shall be six.

(c) All persons doing business within the city may be provided containers as outlined in this section if dumpster service is not utilized. The public works director shall make the final decision as to the need for dumpster service for businesses. The maximum number of containers allowed per business shall be determined from time to time by the city council as a matter of policy.

(d) Containers shall be used for the purpose of holding regular household refuse. No items such as sticks, yard clippings, leaves, etc., may be placed in roll-out containers after December 1, 1992.

(e) Rocks, stones, bricks, dirt, iron items, sheet metal, etc., shall not be placed in the containers.

(f) The city will be responsible for repairing or replacing containers only for normal wear and tear. All other damage to the containers shall be assessed against the property owner and/or tenant of the property. This policy shall also apply to missing containers. If the container is stolen, it must be reported to the police department immediately. Residents should call the administrative office when roll-out containers need repairs.

(g) Residents are required to clean roll-out containers when needed to keep down odor and insects.

(h) The city may refuse to collect the following types of solid wastes and it shall be unlawful for any person to place any of the following in any container or receptacle for collection by the city:

- (1) Hazardous refuse and industrial waste. It shall be the responsibility of the person in possession of the premises to see that it is disposed of properly.
- (2) Oils/lubricants or any other type matter that may damage the container, cause it to leak, or erode wheel parts.
- (3) Contagious disease refuse. The removal of clothing, bedding or other refuse from

homes or the places where highly infectious diseases have occurred shall be performed under the supervision and direction of the county health department.

- (4) Human tissues or wastes resulting from operation, autopsy, or obstetrical procedures or any other material of similar nature.
- (5) Materials of any kind or nature, including ashes, that contain any hot or live coals or fire.
- (6) Dead animals of any sort.
- (7) Hypodermic needles and/or any other sharp object.
- (8) Any other items that are prohibited from disposal in the county landfill.

(i) All refuse placed at curb beside container will not be removed unless resident has the maximum number of containers. If resident doesn't have the maximum number of containers they will be required to get another container.

(j) Violations of this section shall, upon conviction, be punished in accordance with section 1-11. (Ord. of 2-10-92, § 17-8; Ord. of 6-8-92, § 1; Ord. of 4-6-98(2), § 2)

Sec. 22-39. Storage of refuse.

Each owner and every occupant or other person in control of any building or land in the city, including vacant property, shall keep the same in a clean and orderly condition and shall deposit refuse for collection in accordance with the provisions of this article and the regulations of the director of public works. Combustible and noncombustible refuse shall be stored in containers complying with this Code. (Ord. of 2-10-92, § 17-9)

Sec. 22-40. Precollection practices.

The occupant, whether owner or tenants, of single-family and multifamily residential units requiring a roll-out cart in which to store their refuse shall adhere to the following precollection practices:

- (1) Garbage and general rubbish shall be

stored only in receptacles approved under section 22-38 and such receptacles shall be covered at all times.

- (2) All dangerous trash items such as broken glass, light bulbs, etc., shall be securely wrapped to prevent injury to collection crews.

(Ord. of 2-10-92, § 17-10)

Sec. 22-41. Container collections, special collections.

(a) All roll-out garbage containers shall be picked up at the curbside one time per week. Containers shall be placed adjacent to the street for easy access by city sanitation personnel.

(b) Containers shall not be placed in such a manner so as to entirely obstruct a city sidewalk. Partial obstruction may be permitted on the day of garbage collection if the sanitation customer has no other location at the curbside where the container may be placed for city collection other than on the sidewalk.

(c) It shall be the duty of the occupant of any building or residential unit to remove the empty container or containers from the place of deposit at curbside or otherwise to the storage location. Such removal shall be accomplished no later than 7:00 p.m. on the day of the collection.

(d) Exceptions may be made for those physically disabled persons living alone or living only with other physically disabled persons upon receipt by the city of a doctor's certification attesting to the resident's physical inability to place the container at curbside or to remove the container from the curbside after collection. Upon receipt of an appropriate doctor's certification, city sanitation employees shall retrieve the container from a location which is accessible to the employee and thereafter replace the container in the same location where it was initially placed prior to collection.

(e) The city will collect normal household discarded furniture, including sofas, chairs, bedding, etc. Items for collection shall be placed at curbside. This service shall be available to residential premises only.

(f) Appliances will be picked up on a weekly schedule. Request shall be made to the administrative office prior to pick up date.

(g) The city shall only collect leaves from places for collection at the curbside. Leaves shall be

contained in plastic bags and placed for collection immediately adjacent to that portion of the street right-of-way normally used by vehicles. From October 1, through February 1, leaves may also be placed for collection in loose piles exclusively for leaves immediately adjacent to that portion of the street right-of-way normally used by vehicles. At no other time will loose piles of leaves be collected by the city.

(Ord. of 2-10-92, § 17-11; Ord. of 5-11-92, § 1; Ord. of 6-8-92, § 1)

Sec. 22-42. Large rocks, tree stumps, tree, hedge and shrubbery cuttings, etc.

Tree, hedge and shrubbery trimmings shall be placed at the curb for collection in accordance with the following guidelines:

- (1) No tree trunks, branches, limbs, etc., larger than six inches in diameter, or longer than five feet in length shall be collected by the city.
- (2) Tree and shrubbery limbs shall have protruding branches or limbs of a size not to be blown about and scattered by the elements; they shall be effectively tied so as to avoid wind driven debris and unsightly litter conditions. Thorny vegetation shall be placed near the curb in small, neat piles.
- (3) Tree limbs shall be separated from smaller shrubbery trimmings to allow for chipping; all brush shall be put in separate piles from other general debris.
- (4) Limbs and cuttings must be placed with butt or cut end toward the street or public alley and must be of the size that can be handled by one man.
- (5) The city shall not collect tree and shrubbery trimmings resulting from contracted services; nor shall the city collect, remove or assist in the removal of tree stumps, small rocks, tree trunks, heavy grass or dirt resulting from the clearing of any property of any kind. It shall be unlawful for any person to place or deposit any such item at curbside at any time.

Sec. 22-43. Solid and liquid wastes the city will not collect.

(a) The city will not collect the following types of solid and liquid wastes and it shall be illegal for any person to place any of the following in any container or receptacle or along the city right-of-way or curbside for collection:

- (1) Hazardous refuse and industrial wastes.
- (2) Contagious disease refuse.
- (3) Building materials, small amounts not associated with repairs, alterations, construction or demolition may be picked up by permit.
- (4) Tires.
- (5) Any materials, including ashes, containing hot or live coals.
- (6) Large dead animals.
- (7) Barrels and/or drums.
- (8) Motor oils, lubricants, antifreeze, etc.
- (9) Any other items that are prohibited from disposal by the county landfill.

(b) It shall be the responsibility of the property owner to legally and properly dispose of these items.
(Ord. of 2-10-92, § 17-13)

Secs. 22-44--22-65. Reserved.

ARTICLE III.

HAZARDOUS MATERIALS AND INDUSTRIAL WASTES*

* **Cross References:** Environment, ch. 14; transportation of radioactive substances, § 14-101 et seq.

Sec. 22-66. Hazardous materials.

(a) It shall be unlawful to place any hazardous refuse in any receptacle used for collection by the city.

(b) It shall be unlawful to place in any

(Ord. of 2-10-92, § 17-12)

container, at curbside, or in any catch basin, manhole or drainage ditch or structure any materials considered to be hazardous refuse by the U.S. EPA or any other responsible agency.

(Ord. of 2-10-92, § 17-14)

Sec. 22-67. Industrial wastes.

The city shall not collect any type industrial wastes, solid, liquid, hazardous or highly combustible. It shall be unlawful to place industrial waste in any container or receptacle for collection by the city. Industrial waste shall be collected, removed and disposed of by the operator of the factory or industry creating the same.

(Ord. of 2-10-92, § 17-15)

Sec. 22-68. Penalties.

Upon a determination by the Public Works Director, or his agent, that a violation has occurred, the property owner and/or the occupant or other person in control of any building or land in the City, including vacant property, shall have five (5) days from the issuance of a notice of violation in which to come into compliance with this chapter.

(1) Upon the expiration of the period of abatement and the violation continues to exist, the City may correct the violation at a cost to the property owner and or the occupant or other person in control of the building or land; and or/

(2) Seek remedies as outlined in Section 1-11 of this Code.

This ordinance will become effective on the 8th day of October, 2001.

Chapter 23
RESERVED

Chapter 24

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

Article I. In General

- Sec. 24-1. Obstruction generally.
- Sec. 24-2. Construction, etc., of building not to obstruct usage of street or sidewalk; temporary obstructions.
- Sec. 24-3. Barricades.
- Sec. 24-4. Moving buildings.
- Sec. 24-5. Parades.
- Secs. 24-6--24-35. Reserved.

Article II. Excavations

- Sec. 24-36. Permit required.
- Sec. 24-37. Restoration.
- Sec. 24-38. Warning devices at site of excavation.

* **Cross References:** Transportation of radioactive substances, § 14-101 et seq.; traffic and vehicles, ch. 28.
State Law References: Municipal authority to regulate streets and sidewalks, G.S. 160A-296.

ARTICLE I. IN GENERAL

Sec. 24-1. Obstruction generally.

No person shall place an obstruction in any street or on any sidewalk except as permitted in Section 22-41.
(Code 1973, § 18-1)

State Law References: Authority of city to prevent obstruction of streets and sidewalks, G.S. 160A-296.

Sec. 24-2. Construction, etc., of building not to obstruct use of street or sidewalk; temporary obstructions.

No person shall construct any building or repair, alter or change any existing building in such manner as to obstruct or interfere with the free usage of any sidewalk or street, or any part of such sidewalk or street; provided, that for the purposes of this section the words "obstruct" or "interfere" shall be construed to mean any permanent encroachment or temporary encroachment across that part of the street line which separates or divides the sidewalk or street from the property of an abutting owner; provided, that when necessary and in the discretion of the city manager a temporary obstruction or interference may be permitted upon such conditions as may be prescribed by the city manager.
(Code 1973, § 18-2)

Sec. 24-3. Barricades.

(a) No person shall drive any motor vehicle or any vehicle of any kind into or upon any alley or street when such street or alley has been barricaded by employees of the city.

(b) No person, other than an employee of the city, shall remove, tear down or destroy any barricade which has been erected by the city.
(Code 1973, §§ 18-3, 18-4)

Sec. 24-4. Moving buildings.

It shall be unlawful for any person to move or cause to be moved any building along, through or across any street or alley in the city or, while engaged in moving same or causing same to be moved, to allow such building to remain stationary for longer than six hours of daylight without first obtaining the permission of the city manager or, when engaged in moving or causing to be moved any building through, along or across any street or alley, to tear down, injure, damage or deface any electric light or telephone

wires, cable, poles or fixture or any fence or bridge without replacing and leaving same in as good condition as found, within 24 hours.

(Code 1973, § 18-5)

State Law References: Professional housemoving, G.S. 20-356 et seq.; housemoving permit, G.S. 160A-417(a).

Sec. 24-5. Parades.

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning: The term "parade" as used in this section shall be defined as an assemblage of more than five vehicles or 25 pedestrians in a public procession along the streets of the city, but it shall not include funeral processions, sightseeing groups or bands or marching groups proceeding to the assembly point to participate in a parade.

(b) It shall be unlawful for any person to inaugurate, promote or participate in any parade over the streets of the city except as provided in this section. Parades may be held in conformity with the following requirements:

- (1) No parades or parts thereof may be upon the streets of the city between the hours of 5:30 p.m. and 9:00 a.m.
- (2) No parades conducted in the city may last longer than the amount of time authorized by the permit.
- (3) No more than one parade may be conducted during any one calendar day.
- (4) Parade routes shall be approved by the chief of police.
- (5) Parades may not be conducted until a permit therefor has been secured from the chief of police, and the application for permit shall be made at least five days before the date on which the parade is to be held. The chief of police shall issue a permit if it appears that the parade will be held in conformity with this section, but may stop and disperse a parade conducted in violation of this section even though a permit therefor has been issued by him.

- (6) The chief of police when expressly authorized and directed by the city manager shall have the authority and duty to prohibit or restrict parking of vehicles along a highway or part thereof constituting a part of the route of a parade or at the point of assembly or dispersal of a parade for a period of from three hours before its commencement to one hour after its dispersal. The chief of police shall post signs to such effect and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street unposted in violation of this section.

(Code 1973, § 18-6)

State Law References: Regulation of motor vehicles in parades, G.S. 20-169.

Secs. 24-6--24-35. Reserved.

ARTICLE II. EXCAVATIONS*

* **State Law References:** Authority to regulate digging in streets, etc., G.S. 160A-296.

Sec. 24-36. Permit required.

No person shall make any excavation, cut, or other opening in any of the streets, curbs, or sidewalks without first having obtained a permit.

For those uses other than single and two family dwellings, no driveway shall access a public street closer than seventy-five (75) feet from the right of way of an intersecting street. Where this distance is not possible due to lot dimensions or depth, the driveway application shall be presented to the City of Cherryville Technical Review Committee for approval (review committee – Planning Director, City Manager, and Public Works Director). Any appeal of a decision of the Technical Review Committee shall be decided by the City Council of the City of Cherryville.

All driveway or curbcuts in non-residential (ie. B-1, B-2, B-3, B-P, and GMC) zoning districts, and adjacent property(s) must be reviewed and approved by the City of Cherryville Technical Review Committee. For those uses other than single and two family dwellings, no more than one (1) driveway access to a street will be permitted for each one hundred fifty (150) feet (or fraction thereof) of

frontage on said street. However, any retail use engaged significantly in automobile use shall be permitted one (1) additional access point along its total frontage (total includes the total for all streets for which the use fronts), provided the said driveway is no closer than thirty-six (36) feet from any other access point.

This ordinance will become effective on the 13th day of July, 1998.

(Code 1973, § 18-7)

Sec. 24-37. Restoration.

Any person who makes an excavation, cut or other opening in any street or sidewalk of the city shall, upon completion of the work necessitating such excavation, cut or other opening, restore such street or sidewalk to its original condition or better and shall save the city harmless from any liability for any injury resulting from such excavation, cut or other opening.

(Code 1973, § 18-8)

Sec. 24-38. Warning devices at site of excavation.

Any person excavating or opening any street or sidewalk shall protect such excavation with a sufficient number of warning devices capable of being easily seen by oncoming traffic, both pedestrian and vehicular.

(Code 1973, § 18-9)

Chapter 25

YOUTH PROTECTION REGULATIONS (Adopted 2-12-01)

Article I. IN GENERAL

Sec. 25.01	Purpose
Sec. 25.02	Definitions
Sec. 25.03	Offenses
Sec. 25.04	Exceptions
Sec. 25.05	Defense
Sec. 25.06	Enforcement
Sec. 25.07-98	Reserved.
Sec. 25.99	Penalty.

ARTICLE I. IN GENERAL

Sec. 25.01 Purpose.

The purpose of this chapter is to protect juveniles from victimization and exposure to criminal activity by establishing a curfew for juveniles under the age of 16 years in the City. The Youth Protection Ordinance is intended to reinforce and promote the role of the parent in raising and guiding children, and promote the health, safety, and welfare of both juveniles and adults by creating an environment offering better protection and security for all concerned.

Sec. 25.02 Definitions.

For the purpose of this chapter, the following words and phrases shall have the following meanings.

Direct route. The shortest reasonable path of travel or a commonly used route to reach a final destination without any detour or stop along the way.

Emergency. An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or death. This term also shall include any action that is reasonably necessary in order to respond to the medical needs of a family member of the juvenile regardless of whether the juvenile's action is taken in order to prevent death or serious bodily injury.

Establishment. Any privately owned place of business operated for profit to which the public has access or is invited including but not limited to any place of amusement or entertainment.

Guardian. A person who is court-appointed to be the guardian of a juvenile.

Juvenile. A person under the age of 16 years.

Owner/Operator. Any individual, firm, association, partnership or corporation, operating, managing or conducting any establishment, including the employees, members or partners of an association or partnership and the officers of a corporation.

Parent. A person who is a natural parent, adoptive parent, foster parent or step-parent of another person, or a

person to whom legal custody has been given by court order.

Public Place. Any place that is generally open to and used by the public or a substantial group of the public, whether it be publicly or privately owned, including but not limited to, streets, sidewalks, highways, alleys, rights of way, public vehicular areas and parking lots, transportation facilities, theaters, restaurants, shops, bowling alleys, schools and school grounds, places of business and amusement, playgrounds, parks, similar areas that are open to the public, and other common areas open to or accessible to the public.

Remain. To linger or stay in a public place, or to fail to leave the premises when requested to do so by a police officer, or to fail to leave the premises of an establishment when requested to do so by the owner/operator or employee of the premises.

Restricted Hours. The time of night referred to herein is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Savings Time, generally observed at that hour by the public in the City. Restricted hours shall be from 11:00pm to 6:00am daily.

Sec. 25.03 Offenses.

Except as provided by Sec. 25.04, the following offenses constitute a violation of this chapter:

(A) A juvenile commits an offense by being present in or remaining in any public place or on the premises of any establishment within the city during the restricted hours.

(B) A parent or guardian of a juvenile commits an offense if he knowingly permits, or by insufficient control, allows the juvenile to remain in any public place or on the premises of any establishment within the city during the restricted hours. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct whereabouts of such juvenile.

(C) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows

a juvenile to remain upon the premises of the establishment during the restricted hours. The term "knowingly" includes knowledge that an operator or employer should reasonably be expected to have concerning the patrons of an establishment. The standard for "knowingly" shall be applied through an objective test: whether a reasonable person in the operator's or employee's position should have known that the patron was a juvenile in violation of this chapter.

(D) It shall be a violation of this chapter for any person 16 years of age or older to aid or abet a juvenile in the violation of division (A).

(E) It shall be a violation of this chapter for a parent or guardian to refuse to take custody during the restricted hours of a juvenile for whom the parent or guardian is responsible.

Sec. 25.04 Exceptions.

A juvenile who is in a public place or establishment during the restricted hours shall not be in violation of this chapter if the juvenile is :

(A) Accompanied by his parent or guardian.

(B) Accompanied by an adult 18 years of age or older authorized by the parent or guardian of such juvenile to take the parent or guardian's place in accompanying the juvenile for a designated period of time and purpose within a specified area.

(C) On an errand, using a direct route, at the direction of the juvenile's parent or guardian until the hour of 12:30am.

(D) In a motor vehicle with parental consent engaged in interstate travel through the city or originating or terminating in the city.

(E) Traveling in a motor vehicle with a parent or guardian, or traveling in a motor vehicle with an adult 18 years of age or older authorized by the parent or guardian of such juvenile to take the parent or guardian's place in accompanying the juvenile for a designated period of time and purpose with a specified area.

(F) Engaged in a lawful employment activity, or using a direct route to or from a place of employment.

(G) Reacting or responding to an emergency.

(H) Attending or traveling to or from, by direct route, an official school, religious, or recreational activity that is supervised by adults and sponsored by a public or private school, the city or other government entity, a civic organization, or another similar entity that accepts responsibility for the juvenile.

(I) Exercising First Amendment rights protected by the United States Constitution such as the free exercise of religion, freedom of speech, and the right of assembly.

(J) Married or emancipated.

(K) When authorized, by special permit from the Chief of Police or his designee carried on the person of the juvenile thus authorized, as follows. When necessary nighttime activities of a juvenile may be inadequately provided for by other provisions of this chapter, then recourse may be had to the Chief of Police, or his designee, either for a regulation as provided in division (L) or for a special permit as the circumstances warrant. Upon the findings of reasonable necessity for the use of a public place to the extent warranted by a written application signed by a juvenile, and by a parent of the juvenile, if feasible, stating (1) the name, age and address of the juvenile; (2) the name, address, and telephone number of a parent thereof; (3) the height, weight, sex, color of eyes and hair and other physical characteristics of the juvenile; (4) the necessity that requires the juvenile to remain upon a public place during the restricted hours otherwise applicable; (5) the public place; and (6) the beginning and ending of the period of time involved by date and hour, the Chief of Police or his designee may grant a permit in writing for the juvenile's use of a public place at such hours as in the opinion of the Chief of Police may reasonably be necessary and consistent with the purposes of this chapter.

(L) When authorized by regulation issued by the Chief of Police or his designee in other similar cases of reasonable necessity, similarly handled as set forth in division (K) but adapted to reasonably necessary nighttime activities of more juveniles that can readily be dealt with on an individual special permit basis. Normally such regulation by the Chief of Police or his designee permitting use of public places should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as the schools, and shall define the activity, the scope of the use of the public places permitted, the period of time involved not to extend more than one hour beyond the time for termination of the activity, and the reason for finding that the regulation is reasonably necessary and is consistent with the purposes of

is chapter.

Sec. 25.05 Defense.

It is a defense to prosecution under Sec. 25.03 (C) that the owner, operator, or employee of an establishment promptly notified the police department that a juvenile was present on the premises of the establishment during the restricted hours and refused to leave.

Sec. 25.06 Enforcement.**(A) First offense**

(1) Before taking any enforcement action under this chapter, a police officer shall as the apparent offender's age and reason for being in the public place or establishment during restricted hours.

(2) The officer shall not prepare a juvenile arrest report, issue a citation, or make an arrest under this chapter unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstance, no exception or defense in Sec. 25.04 and Sec. 25.05 is present.

(3) The police officer shall escort the juvenile home to his parent or guardian. The officer will inform the parent/guardian in writing of the acknowledging that they understand the chapter and agree to abide by the chapter. The minor will then be released to the custody of the parent/guardian.

(B) Second Offense

(1) Before taking any enforcement action under this chapter a police officer shall ask the apparent offender's age and reason for being in the public place or establishment during restricted hours.

(2) The police officer will ascertain whether this is a second offense of this chapter by the juvenile.

(3) The juvenile will be transported to the Police Department and held until the parents or guardians can be notified to pick up the juvenile.

Sec. 25.99 Penalty.

(A) A juvenile who violates any provision of the chapter is subject to being adjudicated delinquent. The court may, in its discretion, impose any dispositional alternative(s) that are provided in the North Carolina

Juvenile Code for any juvenile who is delinquent.

(B) Any person other than a juvenile who violates any provision of this chapter after first warning shall be subject to a civil penalty as allowed by Sec. 1-11 of this Code.

(C) Any person other than a juvenile who violates any provision of this chapter a third or subsequent times shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$100, and imprisonment in the discretion of the court in accordance with NCGS Sec. 14-4.

Chapter 26

TAXATION AND FINANCE*

Article I. In General

Sec. 26-1. Fiscal year; expiration of licenses.
Secs. 26-2--26-35. Reserved.

Article II. Capital Reserve Water and Sewer Fund

Sec. 26-36. Established.
Sec. 26-37. Charges and fees to be deposited.
Sec. 26-38. Expenditures authorized.
Sec. 26-39. Designation of depositories.
Sec. 26-40. Withdrawals generally.
Secs. 26-41--26-65. Reserved.

Article III. Capital Reserve Recreation Fund

Sec. 26-66. Established.
Sec. 26-67. Revenues to be deposited.
Sec. 26-68. Expenditures authorized.
Sec. 26-69. Designation of depositories.
Sec. 26-70. Withdrawals generally.
Sec. 26-100 Gross Receipts Tax (Adopted 7-10-00)

Cross References: Administration, ch. 2; perpetual care trust fund, § 12-46 et seq.

State Law References: Local government finance, G.S. 159-1 et seq.; authority of city to tax, G.S. 160A-206--160A-214.

ARTICLE I. IN GENERAL

Sec. 26-1. Fiscal year; expiration of licenses.

The fiscal year of the city shall be from July 1 to June 30. All licenses issued by the city shall expire on June 30 of each year.
(Code 1973, § 8-1)

Secs. 26-2--26-35. Reserved.

ARTICLE II. CAPITAL RESERVE WATER AND SEWER FUND*

Sec. 26-36. Established.

A capital reserve water and sewer fund is hereby established under the authority of G.S. 159-18--159-22 which is cited as the Local Government Budget and Fiscal Control Act.
(Code 1973, §§ 8-6, 8-11)

Sec. 26-37. Charges and fees to be deposited.

The surplus revenues from charges and fees for water service in excess of funds required for the operation, maintenance and debt service of such water systems shall be placed in the capital reserve fund established by this article, which shall accumulate for such periods of time as the city council may designate from time to time and in amounts reasonably necessary to accomplish the purposes of this article.

(Code 1973, §§ 8-7, 8-12)

Sec. 26-38. Expenditures authorized.

Expenditure of moneys in the capital reserve fund may be made at any time or from time to time for all or part of the cost of constructing, reconstruction or enlargement of an extension to systems, plants, works and properties used or useful in connection with the water and sewer service.
(Code 1973, §§ 8-8, 8-13)

Sec. 26-39. Designation of depositories.

A bank shall be designated as the depository in which moneys of the capital reserve fund shall be deposited.
(Code 1973, §§ 8-9, 8-14)

* Cross References: Utilities, ch. 30; sewers, § 30-6 et seq.

Sec. 26-40. Withdrawals generally.

Any withdrawal of moneys in the capital reserve fund shall only be by a resolution adopted by the city council.

(Code 1973, §§ 8-10, 8-15)

State Law References: Withdrawals from capital reserve funds, G.S. 159-22.

Secs. 26-41--26-65. Reserved.

ARTICLE III. CAPITAL RESERVE RECREATION FUND

Sec. 26-66. Established.

A capital reserve fund is hereby established under the authority of G.S. 159-18--159-22.
(Code 1973, § 8-16)

Sec. 26-67. Revenues to be deposited.

Contributions or appropriations which the council may designate shall be placed in the capital reserve fund established by this article, which shall accumulate for such periods of time as the city council may designate from time to time and in amounts reasonably necessary to accomplish the purposes of this article.

(Code 1973, § 8-17)

Sec. 26-68. Expenditures authorized.

Expenditures of moneys in the capital reserve fund may be made at any time or from time to time for all or part of the cost of constructing, operating or maintaining recreational facilities.

(Code 1973, § 8-18)

Sec. 26-69. Designation of depositories.

A bank shall be designated the depository in which moneys of the capital reserve fund shall be deposited.
(Code 1973, § 8-19)

Sec. 26-70. Withdrawals generally.

Any withdrawal of moneys in the capital reserve fund shall only be by a resolution adopted by the city council.

(Code 1973, § 8-20)

Sec. 26-100. Levying Tax on Gross Receipts.

In addition to the common meaning of words, the following definition shall be applicable herein:

(A) "*Customer*" shall mean any person that leases or rents a vehicle on a short-term lease or rental basis.

(B) "*General Statutes*" shall refer to the North Carolina General Statutes and may be from time to time amended, modified, supplemented, revised or superseded.

(C) "*Gross receipts*" shall mean the total lease or rental price charged to a customer for the short-term lease or rental at retail of vehicles, excluding sales taxes and excluding the taxes imposed by this Ordinance.

(D) "*Lease or rental*" shall mean a transfer, for consideration of the use but not the ownership of property to another for a period of time. [G.S. S 105-164.3 (7a)].

(E) "*Long-term lease or rental*" shall mean a lease or rent property to the same person for a period of at least three hundred sixty-five (365) continuous days. [G.S. S 105-187.1 (3)].

(F) "*Person*" shall mean any individual, trustee, executor, other fiduciary corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

(G) "*Short-term lease or rental*" shall mean any lease or rent of a vehicle that is not a long-term lease or rental [G.S. S 160A-215.1 (c)(2) and G.S. S 105-187.1 (4)].

(H) "*Tax Collector*" shall refer to that individual appointed by the governing body pursuant to G.S. S 105-349, to collect taxes on behalf of the City and any other person authorized to carry out the duties and functions of such individual.

(I) "*Vehicle*" shall mean any of the following:

- (i) a motor vehicle of the private passenger type, including a passenger van, minivan, or sport utility vehicle.
- (ii) a motor vehicle of the cargo type, including a cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight, and that does not require the operator to possess a commercial driver's license.

(iii) a trailer or semi trailer with a gross vehicle weight of 6,000 pounds or less [G.S. S 160A-215.1(e)(1)].

Sec. 26-101 Levy of Tax.

A tax is hereby imposed and levied in an amount equal to one and one-half percent (1.5%) of the gross receipt derived from the short-term lease or rental of vehicles at retail to the general public. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. S 160A-211.

Sec. 26-102 Collection of the Tax.

Every person engaged in the business of the short-term lease or rental of vehicles at retail to the general public shall collect at the time of the lease or rental the tax herein levied, place the tax so collected in a segregated account, and thereafter remit such tax to the Tax Collector in accordance with the provisions of this Ordinance. The taxpayer shall include a provision in each retail short-term lease or rental agreement stating that the percentage amount enacted by this Ordinance of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipt. The amount of the tax shall be stated separately from the lease or rental and shown separately on the taxpayer's records. The tax shall be paid by the customer to the taxpayer as trustee for an on account of the City. The taxpayer shall be liable for the collection thereof and for its payment to the Tax Collector and the taxpayer's failure to charge or to collect said tax from the customer shall not affect such liability.

Sec. 26-103 Report and Payment of Tax.

Taxes levied under this Ordinance are due and payable when a return is required to be filed. Every taxpayer shall within the time specified, submit a return to the Tax Collector on the form prescribed by the Tax Collector. A return must be signed by the taxpayer or the taxpayer's agent. Returns of taxpayers are due to the Tax Collector each month on or before the fifteenth (15th) day of the month following the month in which the tax accrues. As provided in G.S. S 160A-208.1 a return shall not be considered a public record and information contained in a return may be disclosed only in accordance therewith.

Sec. 26-104 Taxpayer to Keep Records.

The taxpayer shall keep and preserve suitable records of the gross receipts received by such taxpayer in the conduct of business and such other books or accounts as

may be necessary to determine the amount of the tax for which such taxpayer is liable under provisions of this Ordinance. It shall be the duty of the taxpayer to keep and preserve for a period of three (3) years all such as records of gross receipts and other book and accounts described. All records, books and accounts herein described shall be open for examination at all reasonable hours during the day by the Tax Collector or his duty authorized agent.

Sec. 26-105 Tax Collector to Provide Forms.

The Tax Collector shall design, prepare, print and make available to all taxpayers operating within the municipal boundaries of the City, forms and instructions for filing returns to insure a full collection of and an accounting for taxes due. The failure of any taxpayer to obtain or receive forms shall not relieve such taxpayer from the payment of the tax at the time and in the manner provided.

Sec. 26-106 Situs.

The transaction giving rise to the tax herein levied shall be deemed to have occurred at the local of the entity from which the customer taxes delivery of the vehicle.
[G.S. S 160A-215.1(b)]

ec. 26-107 Penalties and Remedies.

The provisions with respect to remedies and penalties applicable to Subchapter VIII (Local Government Sales and Use Tax) of Chapter 105 of the General Statutes as contained in Article 5 and Article 9, Subchapter 1, Chapter 105 thereof, shall be applicable in like manner to the tax authorized to be levied and collected under this Ordinance, to the extent that the same are not inconsistent with the provisions hereof. The governing body of the City may exercise any power the Secretary of Revenue may exercise in collecting sales and use taxes. [G.S. S 160A-215.1(f)]

Without limiting the foregoing, and subject to any changes in the General Statutes with respect to penalties, interest and remedies, the following shall be applicable with respect to the levy and collection of the taxes imposed herein.

(a) Any taxpayer who fails to file a return on the date it is due, determined with regard to any extension of time for filing, shall pay a penalty equal to five percent (5%) of the amount of the tax if the failure to file is for not more than one (1) month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues not exceeding twenty-five percent (25%)

in the aggregate, or \$5.00, whichever is greater.

(b) Any taxpayer who fails to pay the tax levied herein when due, without intent to evade the tax, shall pay a penalty equal to ten percent (10%) of the tax, except that the penalty shall in no event be less than \$5.00

(c) Taxes shall be payable at par or face amount if paid on or before the filing dates as set forth in Section 26-103. Taxes paid after the filing date will be delinquent and shall be subject to interest charges. Interest shall accrue at the rate of three-fourths of one percent (3/4%) a month or fraction thereof until the principal amount of the taxes, the accrued interest, and any penalties are paid.

(d) When the bank upon which any uncertified check tendered to the Tax Collector in payment of taxes, penalties or interest returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Tax Collector shall assess a penalty equal to ten percent (10%) of the check, subject to minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000.00)

(e) Any taxpayer who willfully attempts, or any person who aids or abets any taxpayer to attempt in any manner to evade or defeat a tax imposed herein or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.

(f) Any taxpayer required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor.

(g) Any taxpayer required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times as required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. If a corporation or a limited liability company fails to file any return or pay the tax required for 90 days after it is due. The Tax Collector shall inform the Secretary of State of this failure pursuant to the provisions of Section 260 of Chapter 105 of the General Statutes.

(h) The Tax Collector shall have the rights of attachment and garnishment as set forth in sections 212 and 368 of chapter 105 of the General Statutes in enforcing the collection of taxes imposed herein. In addition to any other

remedies authorized by law.

Sec. 26-108 Administration.

The Tax Collector shall administer and collect the taxes levied herein from every person engaged in the business of short term leasing or rental of vehicles and the Tax Collector may promulgate additional rules and regulations necessary for implementation of the taxes. In addition to the same manner as the Sales and Use Tax as provided in Article 5, Subchapter 1, Chapter 105 of the General Statutes. [G.S. S 160A-215.1(d)]

Sec. 26-109 Assessment Procedure.

If the Tax Collector discovers that any return of tax is due from a taxpayer, the taxpayer shall be notified in writing of the failure to file and of the proposed assessment, if known by the Tax Collector. The assessment may be made on the best information of the Tax Collector. A proposed assessment is presumed to be correct. The notice shall be delivered either in person or by United States mail sent to the taxpayer's last known address. The notice is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary within 90 days after the notice was mailed. If the taxpayer makes this affidavit, the time limitations for a request for hearing as hereafter provided apply as if the notice had been delivered on the date the taxpayer makes the affidavit.

A taxpayer who objects to the proposed assessment or the requirement to file a return is entitled to a hearing upon written request within 30 days after the date of personal delivery. If no request for a hearing is timely made, the proposed assessment becomes final without further notice.

If a taxpayer files a timely request for hearing, the Tax Collector shall set a hearing date within 90 days, and notify the taxpayer at least 10 days prior to the hearing date. Within 90 days after the hearing, the Tax Collector shall notify the taxpayer of the final decision. The taxpayer may then appeal the decision as set forth in Section 26-110 of this Ordinance. The Tax Collector shall have not authority to waive or compromise any interest or penalty imposed by this ordinance.

Sec. 26-110 Appeals.

The City Council, exercising the powers of the Secretary of Revenue in collecting sales and use taxes, designates the City Manager, his designee, to act as deputy for the purpose of compromising or forgiving for good

cause shown any penalty or additional tax imposed herein, and for conducting any hearings and making decisions to determine the validity of a tax imposed by the Tax Collector. If a taxpayer claims that a tax, additional tax, penalty or interest is excessive, a notice of appeal must be filed by the taxpayer within 30 days after the final notice of the Tax Collector is mailed or personally delivered to the taxpayer as provided in Section 10 of this Ordinance. The final decision of the deputy shall be made and mailed or delivered to the taxpayer within 30 days after the hearing. The taxpayer may file suit for a refund in the Superior Court of Gaston County pursuant to the provisions of Section 267 of Chapter 105 of the General Statutes.

Sec. 26-111

All ordinance or portions of ordinances in conflict herein are hereby repealed.

Sec. 26-112

Should any provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Sec. 26-113

This ordinance shall take effect and be in force from and after July 1, 2000.

Adopted this 10th day of July 2000.



Chapter 27

Reserved

Chapter 28

TRAFFIC AND VEHICLES*

Article I. In General

- Sec. 28-1. Definitions.
- Sec. 28-2. Violations of state law.
- Sec. 28-3. Direction of traffic by police in emergency.
- Sec. 28-4. Applicability of chapter to push carts, bicycles and animal-drawn vehicles.
- Sec. 28-5. Police cards on unattended vehicles in violation of chapter.
- Secs. 28-6--28-35. Reserved.

Article II. Operation of Vehicles

- Sec. 28-36. Truck routes.
- Sec. 28-37. Streets designated for passenger motor vehicles only.
- Sec. 28-38. Stop intersections.
- Sec. 28-39. One-way streets.
- Sec. 28-40. Quiet zones.
- Sec. 28-41. Driving on sidewalk.
- Sec. 28-42. Motorcycles and bicycles, riding on handlebars, frame or tank.
- Sec. 28-43. Operation of certain vehicles prohibited in central business district.
- Sec. 28-44. Lights on bicycles.
- Sec. 28-45. Toy vehicles, etc., on streets.
- Sec. 28-46. Speed limitations generally.
- Sec. 28-47. Obstruction of traffic at intersections.
- Sec. 28-48. Vehicle processions.
- Secs. 28-49--28-75. Reserved.

Article III. Traffic Control Devices

- Sec. 28-76. Obedience generally.
- Sec. 28-77. Turn signs and indicators.
- Secs. 28-78--28-100. Reserved.

Article IV. Standing, Stopping and Parking

- Sec. 28-101. Prohibited in certain locations.
- Sec. 28-102. Standing or parking for certain purposes.
- Sec. 28-103. Stopping other than for parking.
- Sec. 28-104. Interference with passage of other vehicles.
- Sec. 28-105. Limited parking--Prohibited at all times on certain streets.
- Sec. 28-106. Same--During certain hours.
- Sec. 28-107. Same--Two-hour limit.
- Sec. 28-108. Places for specified purposes.
- Sec. 28-109. Parallel parking generally.
- Sec. 28-110. Left side of vehicle to curb prohibited.
- Sec. 28-111. Marked areas generally.
- Sec. 28-112. Fines For Parking Violations (Adopted 12-14-98)

* **Cross References:** Any ordinance prescribing specific traffic regulations for streets such as speed limits or one-way streets saved from repeal, § 1-6(13); transportation of radioactive substances, § 14-101 et seq.; riding on fire apparatus prohibited, § 16-1; streets, sidewalks and other public places, ch. 24.

State Law References: Authority to control, regulate, etc., traffic, G.S. 160A-300.

ARTICLE I. IN GENERAL

Sec. 28-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized emergency vehicles means vehicles of the fire department, police vehicles, ambulances and such other vehicles as are designated or authorized by the chief of police.

Block means the length of that portion of any street which is located between two street intersections.

Crosswalk means that portion of a roadway which lies between the prolongation of the lateral sidewalk or boundary lines over an intersection, or any portion of a roadway distinctly indicated by lines or other markings on the surface for pedestrian crossing.

Driver means every person who drives or is in actual physical control of a vehicle.

Intersection means the area embraced within the prolongation of the lateral curblines or, if none, then the lateral boundary lines of two or more streets which join one another at any angle whether or not one such street crosses the other.

Motor vehicle means every vehicle which is self-propelled, including those that are propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

Official traffic control devices means all signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of the city council or the official having jurisdiction for the purpose of regulating, warning or guiding traffic.

Official traffic signals means any device, whether manually or automatically operated, by which traffic is alternately directed to stop and to proceed.

Park means the standing of a vehicle whether occupied or not other than temporarily for the purpose of loading or unloading.

Pedestrian means any person afoot.

Police officer means every officer of the city police department or any officer authorized to direct traffic or to make arrests for violation of traffic regulations.

Railroad means a carrier of persons or property with cars operated on stationary rails.

Railroad train means a steam engine, electric or other locomotive with or without cars coupled thereto operated upon rails.

Sidewalk means that portion of a street between the curblines or the lateral lines of a roadway and the adjacent property lines, exclusively intended for the use of pedestrians.

Street or highway means the entire area between lateral property lines which is open to the use of the public as a matter of right for purposes of vehicular traffic.

Traffic means pedestrians, ridden or herded animals, vehicles, street cars and other conveyances either singly or together while using any street for purposes of travel.

(Code 1973, § 13-1)

Cross References: Definitions generally, § 1-2.

State Law References: Similar definitions, G.S. 20-38.

Sec. 28-2. Violations of state law.

Any violation of a provision of the state motor vehicle law within the city shall be deemed a misdemeanor and punished as provided in section 1-11.

(Code 1973, § 13-5)

Sec. 28-3. Direction of traffic by police in emergency.

Upon a fire or other emergency or when it is necessary to expedite traffic or to safeguard pedestrians, police officers may direct traffic as conditions require, notwithstanding the provisions of this chapter.

(Code 1973, § 13-2)

Sec. 28-4. Applicability of chapter to push carts, bicycles and animal-drawn vehicles.

Every person propelling any push cart or riding a bicycle or an animal upon a roadway and every person driving any animal-drawn vehicle shall be subject to the provisions of this chapter which are applicable to any driver of any vehicle, except those provisions of this chapter which by their very nature can have no application.

(Code 1973, § 13-3)

Sec. 28-5. Police cards on unattended vehicles in violation of chapter.

In cases of violation of any section of this chapter by drivers or occupants of vehicles who have left the vehicle unattended, police cards designating the ordinance violated attached to the vehicle shall constitute legal summons to appear at court and shall in all respects be as effective as a personal summons.
(Code 1973, § 13-4)

Secs. 28-6--28-35. Reserved.

ARTICLE II. OPERATION OF VEHICLES*

* **State Law References:** Operation of vehicles and rules of the road, G.S. 20-138.1 et seq.

Sec. 28-36. Truck routes.

When signs have been erected designating certain streets or portions of streets as truck routes, as indicated on the official traffic maps of the city, persons operating trucks shall proceed only as directed by such signs.
(Code 1973, § 13-6)

Sec. 28-37. Streets designated for passenger motor vehicles only.

When signs have been erected designating certain streets or portions of streets as streets for passenger motor vehicles only, as indicated on the official traffic maps of the city, trucks exceeding a specified gross weight shall not be permitted upon such streets or portions thereof.
(Code 1973, § 13-6.1)

Sec. 28-38. Stop intersections.

When stop signs are placed upon streets at intersections, as designated on the official traffic maps of the city, the driver of any vehicle shall bring his vehicle to a stop before entering such intersection, and he shall not proceed into or across the intersecting street until he has first determined that no conflict with traffic will ensue.
(Code 1973, § 13-7)

Sec. 28-39. One-way streets.

Upon those streets and parts of streets indicated on the official traffic maps of the city, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained at every

intersection where movement in the opposite direction is prohibited.
(Code 1973, § 13-8)

Sec. 28-40. Quiet zones.

Whenever authorized signs are placed, as indicated on the official traffic maps of the city, which indicate a zone of quiet, any person operating a motor vehicle within any such zone shall not sound the horn or any other warning device of such vehicle, except in an emergency.
(Code 1973, § 13-9)

Sec. 28-41. Driving on sidewalk.

The driver of a vehicle shall not drive within any sidewalk area, except at a permanent or temporary driveway.
(Code 1973, § 13-10)

Sec. 28-42. Motorcycles and bicycles, riding on handlebars, frame or tank.

The operator of a motorcycle or bicycle, when upon a street, shall not carry any person upon the handlebars, frame or tank of his vehicle, nor shall any person so ride upon any such vehicle.
(Code 1973, § 13-11)

Sec. 28-43. Operation of certain vehicles prohibited in central business district.

(a) It shall be unlawful for any person to ride, operate, lead, push, slide, or propel in any manner any velocipede or vehicle, motorized or otherwise, including but not limited to unicycles, bicycles, tricycles, minibikes, motorcycles, roller skates, skateboards, go-carts, sleds, skis, ponies, horses, cattle, sheep, goats and other large animals on the sidewalk in the central business district of the city, the same being generally described as that area bounded on the north by the Seaboard Railroad, on the east by Depot Street, on the south by Academy Street and on the west by Mulberry Street.

(b) This section shall not apply to wheelchairs and stretchers used for the purpose of transporting disabled, sick or wounded persons.
(Code 1973, § 13-12)

Sec. 28-44. Lights on bicycles.

Every person riding a bicycle at night shall have a lighted lamp on such bicycle.

(Code 1973, § 13-13)

Sec. 28-45. Toy vehicles, etc., on streets.

No person on roller skates or riding in any coaster, toy vehicle, sled or similar device shall go upon any roadway.

(Code 1973, § 13-14)

Sec. 28-46. Speed limitations generally.

Unless the city council stipulates specific speed limits for vehicles, as indicated on the official traffic maps, the provisions of the motor vehicle law of the state, relating to speeds of vehicle, shall be applicable in all sections of the city.

(Code 1973, § 13-15)

Sec. 28-47. Obstruction of traffic at intersections.

No driver shall move his vehicle across an intersection or a marked crosswalk, unless he knows that there is sufficient space on the other side of the intersection or crosswalk to accommodate his vehicle without obstructing the passage of other vehicles or pedestrians, although a traffic control signal may be indicating his right to proceed.

(Code 1973, § 13-17)

Sec. 28-48. Vehicle processions.

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Vehicle procession means a group of motor vehicles:

- (1) The lead vehicle of the procession being a motor vehicle of a law enforcement department with blue warning lights in operation; and
- (2) In single file with headlights of all vehicles in operation.

(b) Any violation of this section shall constitute an infraction, punishable in accordance with section 1-11.

(c) The operator of any motor vehicle, animal-drawn vehicle, velocipede, mounted animal or pedestrian

traveling on or entering upon the streets or highways shall yield the right-of-way to a vehicle procession.

(d) A vehicle procession shall have the right-of-way at all intersections, regardless of the method of traffic control present or in operation at any intersection.

(e) No motor vehicle, animal-drawn vehicle, velocipede, mounted animal or pedestrian, not included in the vehicle procession, shall proceed through a vehicle procession, except emergency vehicles as set forth in G.S. 20-156 and 20-157 when operated in conformity with the provisions of G.S. 20-156 and 20-157.

(f) In zones having a maximum speed limit of 25 miles per hour or less, a vehicle procession may travel at the maximum speed limit. In zones having a maximum speed limit greater than 25 miles per hour, a vehicle procession shall not exceed a speed of ten miles per hour less than the posted speed limit.

(Code 1973, §§ 13-18.1--13-18.4)

Secs. 28-49--28-75. Reserved.

ARTICLE III. TRAFFIC CONTROL DEVICES*

* **State Law References:** Authority of city to use traffic control devices, G.S. 20-169.

Sec. 28-76. Obedience generally.

The driver of any vehicle shall obey the directions of any official traffic control device placed in accordance with the provisions of this Code and other ordinances of the city, subject to certain exceptions which are granted the driver of any authorized emergency vehicle by state law, unless otherwise directed by a police officer.

(Code 1973, § 13-19)

Sec. 28-77. Turn signs and indicators.

Whenever authorized signs are placed, as designated by the official traffic maps of the city, which indicate that no right, left or U-turn is permitted, the driver of a vehicle shall obey the directions of any such sign; and when authorized markers, buttons or other indications are placed within an intersection which indicate the course to be traveled by vehicles traversing or turning, the driver of a vehicle shall obey the directions of such indications.

(Code 1973, § 13-20)

Secs. 28-78--28-100. Reserved.

ARTICLE IV. STANDING, STOPPING AND PARKING*

* **State Law References:** Municipal authority re parking, G.S. 160A-301, 160A-302.

Sec. 28-101. Prohibited in certain locations.

No person shall stop, stand or park a vehicle, except when conflict with other traffic is imminent or when so directed by a police officer or traffic control device in any of the following places:

- (1) On a sidewalk.
- (2) Within an intersection.
- (3) On a crosswalk.
- (4) Within 30 feet of any flashing beacon stop sign or traffic control signal located at the side of a street or roadway.
- (5) On either side of any street leading to a railroad underpass or an overhead bridge, within 50 feet in any direction of the outer edge of such underpass or overhead bridge.
- (6) On either side of any street leading to a grade crossing within 50 feet of the closest rail; provided, that where existing permanent structures are located closer than 50 feet, parking may be permitted in front of such structures unless otherwise prohibited and if such parking does not block the view in either direction of the approach of a locomotive or train.
- (7) Beside or opposite any street excavation or obstruction if the stopping or standing or parking would obstruct traffic.
- (8) Upon any bridge or other elevated structure or within any underpass structure.
- (9) On the roadway side of any vehicle stopping, standing or parking at the edge or curb of a street.
- (10) Within 15 feet of any fireplug or hydrant.

(11) Within ten feet of any street corner.
(Code 1973, § 13-21)

State Law References: Parking near fire hydrant, fire station or private driveway, G.S. 20-162.

Sec. 28-102. Standing or parking for certain purposes.

No person shall stand or park a vehicle upon any street for the principal purposes of:

- (1) Displaying such vehicle for sale.
- (2) Washing, greasing or repairing such vehicle, except repairs necessitated by an emergency.
- (3) Storage of such vehicle.
- (4) Storage of any detached trailer or van when the towing unit has been disconnected.
- (5) Transferring merchandise or freight from one vehicle to another.
- (6) Advertising.

(Code 1973, § 13-22)

Sec. 28-103. Stopping other than for parking.

No vehicle shall stop in any street, except for the purpose of parking as prescribed in this chapter, unless such stop is made necessary by the approach of fire apparatus, by the approach of a funeral or other procession which is given right-of-way, by the stopping of a public conveyance, by the lowering of railway gates, by being given countermanding traffic signals, by the passing of some other vehicle or a pedestrian or by some emergency; in all cases covered by these exceptions such vehicle shall be stopped so as not to obstruct any footway, pedestrian aisle, safety zone, crossing or street intersection if it can be avoided.

(Code 1973, § 13-23)

Sec. 28-104. Interference with passage of other vehicles.

No vehicle shall so stand on any street as to interrupt or interfere with the passage of public conveyances or other vehicles.

(Code 1973, § 13-24)

Sec. 28-105. Limited parking--Prohibited at all times on certain streets.

When signs have been placed which prohibit parking or when the curbing has been painted yellow in lieu of such signs, no person shall park a vehicle at any time upon any street so marked or signed and indicated on the official traffic maps of the city.
(Code 1973, § 13-25)

Sec. 28-106. Same--During certain hours.

When signs have been erected, placed or installed in each block giving notice thereof, no person shall park a vehicle for longer than the period indicated on the signs or during such hours as prohibited by such signs upon any of the streets described on the official traffic maps of the city.
(Code 1973, § 13-26)

Sec. 28-107. Same--Two-hour limit.

No person shall park, or cause to be parked, any motor vehicle on any street for a period of time in excess of two hours unless posted or marked otherwise, except the owner or resident of the abutting real estate in residential areas of the city.
(Code 1973, § 13-26.2)

Sec. 28-108. Places for specified purposes.

When signs have been erected designating certain locations as reserved for the purposes specified on such sign, no person shall park a vehicle in violation of such sign on any street indicated on the official traffic maps of the city.
(Code 1973, § 13-27)

Sec. 28-109. Parallel parking generally.

Where not otherwise indicated by this chapter, all vehicles shall park parallel to the curb and not more than 18 inches therefrom.
(Code 1973, § 13-28)

Sec. 28-110. Left side of vehicle to curb prohibited.

No vehicle shall stop with its left side to the curb.
(Code 1973, § 13-29)

Sec. 28-111. Marked areas generally.

On any street which is marked off with lines indicating parking spaces for motor vehicles, any person parking on such street shall park only as indicated by such lines.
(Code 1973, § 13-30)

Sec. 28-112. Fines For Parking Violations.

The City Council shall establish a schedule of fines for parking violations and may amend said schedule of fines periodically by resolution.

This Ordinance will become effective on the 14th day of December, 1998.

Fine	Charge	Proposed
	Handicap Parking	
	\$100.00	
	Loading Zone	\$20.00
	Parking on Sidewalk	\$10.00
	Parking Left to Curb	\$10.00
	Parking – No Parking Zone	\$10.00
	2 Hour Parking	\$10.00
	Improper Parking	
	\$10.00	
	More Than 12" From Curb	\$10.00



Chapter 29

Reserved

Chapter 30

UTILITIES*

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- Sec. 30-1. Chapter considered part of contract for furnishing service.
- Sec. 30-2. Extension of water or sewer laterals to property line.
- Sec. 30-3. Connections generally.
- Sec. 30-4. Visiting pumping station, electric substation or sewer treatment facilities.
- Sec. 30-5. Claims for damages.
- Sec. 30-6. Right of city to interrupt service for connections, repairs or accidents.
- Sec. 30-7. Overcharges, undercharges.
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- Sec. 30-37. Good faith deposits.
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- Sec. 30-39. Taking and using water from fire hydrant.
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- Sec. 30-69. Wiring and equipment.
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- Sec. 30-84. Service interruptions.
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- Sec. 30-86. Removal of equipment.
- Sec. 30-87. Waiver of default.
- Sec. 30-88. Reconnection fee.
- Sec. 30-89. Copies of service regulations, etc.
- Sec. 30-90. Types of service--Residential service.
- Sec. 30-91. Same--Commercial and industrial service.
- Sec. 30-92. Same--Breakdown and standby service.
- Sec. 30-93. Same--Temporary service.
- Sec. 30-94. Same--Load management devices.

Cross References: Any ordinance or resolution prescribing utility rates, fees or charges saved from repeal, § 1-6(12); buildings and building regulations, ch. 8; capital reserve water and sewer fund, § 26-36 et seq.

State Law References: Municipal authority to operate and regulate utilities, G.S. 160A-312.

Sec. 30-95. Rates generally.
Sec. 30-96. Good faith deposits.
Sec. 30-97. Procedures for determination and collection of service charges.
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Sec. 30-120. Installation and connection of sewerage facilities within houses, etc.
Sec. 30-121. Connection fees.
Sec. 30-122. Sewerage facilities in houses, etc., more than 200 feet from public sanitary sewer.
Sec. 30-123. Uncovering or injuring sewers.
Sec. 30-124. Wastes excessive in quantity or with considerable variation in pollutorial value.
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UTILITIES

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Sec. 30-195. Same--Modification to require compliance with new pretreatment standards.
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Sec. 30-201. Inspections, sampling, etc., by city.
Sec. 30-202. Pretreatment and facilities to be provided at user's expense; plans and operating procedures; availability of records.
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ARTICLE I. IN GENERAL

Sec. 30-1. Chapter considered part of contract for furnishing service.

All pertinent provisions of this chapter are hereby made a part of the terms and conditions whereby the city furnishes sewer, water or electric service to any person or whereby the city makes any sewer, water or electric connections or performs any work of any kind in connection with the furnishing of such services. All ordinances or portions of ordinances in conflict herewith are hereby repealed. Should any provisions of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Adopted this the 11th day of January, 1999.
(Code 1973, § 21-1)

Sec. 30-2. Extension of water or sewer laterals to property line.

After laterals are laid from water or sewer mains to the inside of the curb, no lateral shall be extended to the property line until the owner or occupant of the property to be served thereby applies for such an extension.
(Code 1973, § 21-2)

Sec. 30-3. Connections generally.

(a) No connection shall be made to any sewer or water lateral or to the electric system except after application and approval.

(b) All laterals extending from city mains shall be the responsibility of the property owner to repair and maintain. The City will not maintain any lines less than 6" in diameter.

- (1) If resident has sewer problems the City will assure all mains are flowing and free of obstruction. The lateral will be the property owner's responsibility to repair.
- (2) If repairs are needed on the private lateral under the street the City will cut asphalt and repair asphalt for no charge pending ditch line is properly tamped, filled with 6" ABC stone, and inspected by a city official; or the property

owner may purchase a new tap in which the city will extend a lateral to the property line.

This Ordinance will become effective on the date of its adoption, this 8th day of July, 2002.

(c) All connections made to water mains and sewers shall be done under the supervision of the director of public works.

(d) Every house or building abutting any water or sewer main and requiring a water or sewer connection shall be separately and independently connected, except in those cases where laterals have already been laid in macadam or improved streets from such main without provision being made for such house or building in which case the connection may be made to an existing lateral. If such house or building is on a macadam or improved street where laterals have not been laid, the connection may be made to any convenient lateral. When two or more houses or units are connected with the same water lateral, a separate meter shall be provided for each house or unit.

(e) All water and light meters, meter boxes, pipes and other equipment furnished and used by the city in installing any water, light or sewer connection shall be and remain the property of the city.
(Code 1973, §§ 21-3--21-7)

(f) Electric meters shall be maintained by the city only.

Sec. 30-4. Visiting pumping station, electric substation or sewer treatment facilities.

No visitor shall be permitted to enter the electric substation, the pumping station or sewer treatment facilities unless accompanied by the city employee in charge. Under no circumstances shall anyone be allowed to handle or in any way come in contact with any part of the machinery.
(Code 1973, § 21-8)

Sec. 30-5. Claims for damages.

No claim for damages shall be made against the city on account of any wire connection or any other appliance breaking accidentally or accidental failure to supply sewer service, water or electric current.
(Code 1973, § 21-9)

Sec. 30-6. Right of city to interrupt service for connections, repairs or accidents.

The city shall have the right, at any time, to shut off the electric current, water or sewer service in case of accident or for the purpose of making connections or repairs.

(Code 1973, § 21-10)

Sec. 30-7. Overcharges, undercharges.

If the city has overcharged or undercharged a customer through human or machine error, except for meter inaccuracy or customer fraud, the city shall adjust its charges to refund the overcharge or recover the undercharge as follows:

- (1) If the overcharge or undercharge is due to the acts or omissions of a customer, the entire amount of the undercharge or overcharge shall be collected or refunded respectively for the entire interval of such undercharge or overcharge. If the interval cannot be determined, then the charges for the 12 months preceding the discovery of the billing error shall be used to establish a comparative basis. If the usage and/or demand incurred during the interval cannot be determined, then an appropriate estimate of usage and/or demand shall be used as determined by the city.
- (2) If the undercharge is due to city error, the amount of such undercharge shall be collected for the entire interval involved, not to exceed 150 days for a customer having a demand of less than 50 kilowatts, or 12 months for a customer having a demand of more than 50 kilowatts. If the interval cannot be determined, then an appropriate estimate of usage and/or demand shall be used as determined by the city.

(Code 1973, § 7-17)

Secs. 30-8--30-35. Reserved.

ARTICLE II.

WATER SERVICE*

* **State Law References:** Authority to operate a water system, G.S. 160A-312.

Sec. 30-36. Rates.

Water rates charged for water services furnished by the city shall be as set from time to time by the city council by resolution. A copy of such resolution shall be kept on file in the office of the city clerk.

(Code 1973, § 21-11)

State Law References: Authority of city to fix and enforce rates, G.S. 160A-314.

Sec. 30-37. Good faith deposits.

Before any water service shall be connected for an applicant for such service, such applicant shall make a good faith deposit as set by the city council from time to time by resolution. A copy of such resolution shall be kept on file in the office of the city clerk.

(Code 1973, § 21-12)

Sec. 30-38. Procedures for determination and collection of service charges.

Procedures for determining and collecting the proper service charge for persons receiving water service from the city shall be established by the city manager in accordance with the rates established under section 30-36.

(Code 1973, § 21-13)

Sec. 30-39. Taking and using water from fire hydrant.

No person, except the director of public works or the chief of the fire department or person in charge of street cleaning, shall take or in any way use water from any fire hydrant for private use, unless such person pays for the privilege and receives a permit to do so.

(Code 1973, § 21-14)

Sec. 30-40. Connection charges.

Charges imposed for the connection of an applicant to the water system of the city shall be as established by resolution of the city council from time to time. A copy of such resolution shall be kept on file in the office of the city clerk.

(Code 1973, § 21-18)

Sec. 30-41. Cross Connections

No cross connections shall be allowed as referenced in the North Carolina Administrative Code, Title 15A, Subsection 18C.

This Ordinance will become effective on the 10th day of April, 2000.

Sec. 30-42. Potable Wells.

There shall be no new potable wells allowed inside the city limits.

Sec. 30-43. Agricultural Wells for Irrigation Purposes

Agricultural wells shall be allowed for irrigation purposes only. The property owner shall apply and pay all applicable fees before a permit will be issued by Gaston County.

- (a) All agricultural wells must comply with all local, state, and federal laws.
- (b) No agricultural wells may be connected in any way to the structure or to a potable water source so as to create a cross connection.
- (c) All agricultural wells once installed must be inspected by a city official before the well can be used, and said wells are subject to subsequent inspection by city officials to assure compliance with this section.

This Ordinance will become effective on the 9th day of September, 2002.

Sec. 30-44. Water Emergency Management.

- (a) **Definition.** The term "water emergency" shall be defined as any condition or situation which threatens the safety or supply of either treated or potable water within the water supply, treatment and distribution systems of the city or with in the systems of the municipal, commercial and industrial customers. Determination of whether specific situations are considered to be water emergencies shall be made by the city manager or his designee after consultation with the utility department head. Water emergency situations shall include, but are not limited to, drought, or periods of insufficient raw water supply and times of a magnitude, such that system integrity is threatened.
- (b) **Declaration of water emergency.** The city manager or his designee after consultation with appropriate city staff, shall be authorized to declare that a water emergency exists. Depending on the severity of the emergency; voluntary (level I), mandatory (level II, or III) or mandatory (level IV) staged water use

restrictions as described in subsection (c) of this section shall be imposed upon customers.

(c) Staged water use restrictions.

- (1) **Level I.** During a declared level I water emergency, the following voluntary water conservation practices shall be encouraged for the public water system served by the city:
 - a. Water of lawns, ornamental plants and gardens shall be limited to that necessary for plant survival only.
 - b. Planting of new ornamental plants and seeding of lawns should be deferred until the water emergency situation no longer exists.
 - c. Household water should be reutilized to the greatest possible extent for watering.
 - d. Use of water for wash down of outside areas such as driveways or parking lots should be curtailed.
 - e. Faucets should not be left running while shaving, brushing teeth or washing dishes.
 - f. The use of clothes and dishwashers should be limited if possible and these units should be operated with full loads when used.
 - g. Washing of cars or other vehicles should be curtailed to Saturdays or Sundays. Hoses should not be left running while washing vehicles.
 - h. The use of flow restrictions and other water saving devices is encouraged.
 - i. Showers should be used for bathing and showers should be limited to four minutes or less.
 - j. Filling of pools shall be deferred or limited to hours between 9:00 pm and 6:00 am.
 - k. Any practice listed in this subsection (c)(1) may be modified or additional practices added at the discretion of the city manager or his designee.
- (2) **Level II.** During a declared level II water emergency, the following mandatory water use restrictions shall be in effect for the public water system served by the city:
 - a. All voluntary practices listed in subsection (c)(1) of this section shall be

mandatory unless stricter measures are indicated in this section.

- b. Residents will be allowed to use water for outdoor activities on Wednesday and Saturday only. They may only use handheld hoses with spring-loaded nozzles. Professional and commercial landscaping, nursery and pressure washing businesses with City of Cherryville Privilege Licenses may resume operations using handheld hoses with spring-loaded nozzles.
- c. Use of water for washing down of exterior areas, including but not limited to buildings, driveways, and/or parking lots, shall be prohibited unless the requirements of subsection (2)(e) below are met.
- d. Public commercial washing structures including those providing hand held washing nozzles may continue normal operation. However, the facility owner/operator shall ensure that waste of water does not occur. All drawing of water shall be prohibited.
- e. Restaurants and other food serving establishments shall serve water to patrons only at the request of the patron(s).
- f. Commercial, industrial and construction operations shall eliminate all possible waste of water.
- g. Newly constructed or drained pools shall be filled only on Wednesday or Saturday. A permit must be obtained from the fire chief or his designee.
- h. Any practice listed above may be modified or additional practices added at the discretion of the city manager or his designee.

(3) Level III. During a declared level III water emergency, the following mandatory water use restrictions shall be in effect for the public water system served by the city:

- a. All practices listed in Level I and Level II shall remain in effect unless stricter measures are indicated in this section.
- b. Restaurants and other food serving establishments shall utilize single serving utensils and plates, and serve water only at the patron(s) request.

- c. Large scale commercial and industrial water customers and construction activities utilizing five thousand (5,000) or more gallons of water per day shall achieve mandatory reduction in daily water usage of twenty-five (25), fifty (50), or seventy-five (75) percent through whatever means available. The target reduction percentage shall be determined by the severity of the Water Emergency, and shall be publicly announced as part of the emergency declaration. The city manager or his designee shall determine compliance with the daily usage reduction targets. Variances to this restriction may be granted to designated public health facilities including but not limited to hospitals and nursing homes.
- d. Drinking water taps or hydrant permits shall be issued or revoked at the discretion of the City Staff.
- e. Any practice listed above may be modified or additional practices added at the discretion of the city manager or his designee.

(4) Level IV. During a declared level IV water emergency, the following mandatory water use restrictions shall be in effect for the public water system served by the city:

- a. All use of water for purposes other than maintenance of public safety is prohibited.
- b. Where the city system is not functional, daily per day residential water use shall not exceed 300 gallons at each metered location.
- c. Where the city system is not functional, National Guard and emergency services vehicles shall be utilized to distribute water for household use at prearranged locations within the affected area. Usage by individuals shall be limited to those amounts necessary to sustain life through drinking, food preparation and personal hygiene.
- d. Compliance plan for industries during level IV remains the same as level II or as directed by the state public health officials. Such plans shall be submitted to the city manager or his designee

within ninety (90) calendar days from the adoption of this section. Plans shall be updated at least every five (5) years.
 e. Any practices listed in this subsection (c)(4) may be modified or additional practices added at the discretion of the city manager or his designee.

(d) Temporary suspension of zoning clearance permits and/or divisions of farad

(1) Duration. During a declared mandatory (Level II, 111, or IV) water emergency, the city manager or his designee may direct that the issuance of zoning clearance permits and/or divisions of land that involve waterline connections or extensions, or any upgrade in capacity for water usage be temporarily suspended for the duration of the water emergency.

(2) Exceptions. Notwithstanding subsection (d)(1) of this section, water connections to the water system owned by the city may continue to be made during a declared mandatory water emergency for the following facilities:

- a. Public schools satisfying compulsory education requirements of the state.
- b. Public facilities for police, sheriff, fire or emergency medical services.
- c. Hospitals.
- d. Facilities of public utilities regulated by the state.

(3) Misdemeanor. It shall be unlawful to make any water service connection, not subject to the exceptions set forth in subsection (d)(2) of this section to the water system owned by the city during the time that zoning clearance permits and/or divisions of land that involve waterline connections or extensions, or any upgrade in capacity for water usage are temporarily suspended. In addition to the civil penalties provided for in subsection (e)(1) of this section, any person, firm, or corporation who shall make such connection during such time shall be guilty of a misdemeanor and, upon convictions, shall be punished for a class 3 misdemeanor and shall be fined not more than \$500.00 as provided in G.S. 14-4.

(e) Noncompliance of water emergency management section.

(1) Penalties. Any person violating the mandatory provisions of this section shall be issued a civil citation pursuant to section 62-36 and a penalty not to exceed \$100.00 for residential customers and \$500.00 for commercial industrial

users. Each occurrence of a violation of this section shall be considered a separate violation.

(2) Discontinuance of service. Pursuant to the provisions of G.S. 162A-88 and this section, water service may be temporarily discontinued for willful disregard of this section. All applicable penalty fees may be applied in the event of service suspensions. In the event of continued gross noncompliance with this section, removal of the meter and service will be deemed proper and service will be discontinued. Tap fees and deposits will be forfeited.

(3) Adoption and enforcement of section provisions. Municipal customers, water corporations or company compliance municipalities, water corporations or companies purchasing water from the city shall adopt and enforce this entire section as a conditions of continuing existing water sales agreements. Upon declaration of a water emergency, such municipalities and companies shall "enforce the appropriate water use restrictions for the level of declared emergency. Water service to such municipalities and companies shall be terminated for not enforcing the provisions of this section.

Adopted this 18th day of November, 2002.

ARTICLE III.

ELECTRIC SERVICE*

Sec. 30-66. Construction of terms.

The user and prospective user of electrical service is referred to as the "customer" or "consumer," and these terms are to be considered as synonymous.
 (Code 1973, § 7-3)

Sec. 30-67. Violation of article a misdemeanor.

Any violation of any provision of this article shall be a general misdemeanor punishable in accordance with section 1-11.
 (Code 1973, § 7-32)

Sec. 30-68. Service agreement.

(a) Electric service will be supplied under:
 * **State Law References:** Electric service in urban areas, G.S. 160A-331 et seq.

- (1) The city's standard form of application, service agreement or contract;
- (2) The applicable rate schedule; and
- (3) These service regulations.

(b) The city shall not be required to supply service unless and until an agreement is executed by the customer and the city, it being understood and agreed that no promise, statement or representation by any agent, employee or other person shall be binding upon the city unless the same be in writing and attached to and made a part of the agreement. Notwithstanding the foregoing, when the requested supply of electricity is for residential use, and no extra charges for additional facilities are involved, the customer's application and the city's acceptance thereof may be verbal, and the city's applicable rate schedules and this article shall be effective in the same manner as if the city's standard form of application for service had been signed by the customer and accepted by the city. Such a verbal service agreement shall be conclusively presumed when there is no written application by a customer, accepted in writing by the city, if electricity supplied by the city is used by the customer or on the customer's premises.

(c) The rights which accrue to the customer under any such agreement or this article are personal and shall not be transferred or assigned by the customer without the written consent of the city.
(Code 1973, § 7-4)

Sec. 30-69. Wiring and equipment.

(a) Equipment which will operate in one locality may be useless in another due to differences in voltage, phase or frequency of electric service; therefore, before wiring a premises or purchasing equipment, the customer shall give the city notice of the character of service requested at such premises. The city may specify the voltage and type of electric service to be furnished, also the location of the meter, and the point where the service connection shall be made.

(b) All the customer's wiring and equipment must be installed and maintained in accordance with the requirements of the city, and the city may refuse to connect service to such customer, or may discontinue service. The customer shall keep in good repair all such wiring and equipment to the point of connection with the facilities of the city.
(Code 1973, § 7-7)

Sec. 30-70. Changes in wiring and equipment.

(a) The customer shall not employ or utilize, without the written consent of the city, any equipment, appliance or device, or permit the continuation of any condition, which tends to create any hazard or otherwise to affect adversely the city's service to such customer or to others. When polyphase electric service is used by any customer, the customer shall control the use of service so that the load will be maintained in reasonable electrical balance between the phases at the point of delivery.

(b) The customer shall give the city reasonable notice in writing of any anticipated increase in demand exceeding 30 kilowatts or ten percent of former demand, whichever is greater, and stating the approximate excess and date required. If, in the opinion of the city, the length of the unexpired term of the agreement and all other factors justify the additional investment required, the city, at its option, will endeavor to provide additional capacity for any increase so requested by the customer within a reasonable time.

(c) The city will extend its facilities and change the point of delivery only when the investment required is warranted by the anticipated revenue and when such extension is permissible and feasible.
(Code 1973, § 7-8)

Sec. 30-71. Access to customer's premises.

The city shall at all reasonable times have the right of ingress, egress and regress from the premises of the customer for any and all purposes connected with the delivery of service or the exercise of any and all rights under the agreement or this article; and the customer, by the acceptance of service, is deemed to consent to the ingress, egress and regress.
(Code 1973, § 7-9)

Sec. 30-72. Customer to furnish right-of-way.

(a) The customer shall at all times furnish the city a satisfactory, lawful and unobstructed right-of-way over his premises for the city's lines and apparatus necessary or incidental to the furnishing of service, and shall also provide satisfactory and easily accessible locations for metering equipment.

(b) The city may change the location of the right-of-way upon request of the customer and may require the customer to bear the expenses thereof so as not to jeopardize the city's service, either to the customer requesting the change or to any other customer. All

privileges of the city incident to the original location shall apply to the new location.

(c) The obligation of the city to supply service is dependent upon the city securing and retaining all necessary rights-of-way, privileges, franchises or permits, for the delivery of such service; and the city shall not be liable to the customer for any failure to deliver service because of the city's inability to secure or retain such rights-of-way, privileges, franchises or permits.
(Code 1973, § 7-10)

Sec. 30-73. Distribution and service facilities.

(a) The city's distribution and service facilities will be installed aboveground on poles, towers or other fixtures; however, underground facilities will be provided in accordance with the city's underground installation policy.

(b) The city may, at its option, require the customer to perform any excavation and backfill necessary for the installation of underground electric service and may require the customer to provide concrete foundation pads for transformers or other pad-mounted equipment associated with underground service. All such work shall be in accordance with city specifications.

(c) Where underground service is requested, the city may also require a contribution in aid of construction, equal to the difference in cost between overhead and underground construction, less the value of work provided by the customer under subsection (b) of this section.

(d) Service connections will be made as follows:

(1) Where both the city's lines and the customer's entrance conductors are aboveground:

a. The city will extend its service conductors to the customer's building, terminating them on the outside of the building at a location to be provided by the customer and satisfactory to the city for this purpose. The location must be of sufficient height to satisfy the requirements of the National Electrical Safety Code and applicable local codes, and the strength of the structure at the

point of termination must be satisfactory to the city.

b. The city will provide all meter sockets or enclosures and the customer will install such socket or enclosure. The city will make the necessary connections for a set fee from its service conductors to the customer's entrance conductors. Fees listed below.

\$50.00 for a 200 amp base
\$150.00 for a 400 amp base

(2) Where both the city's lines and the customer's entrance conductors are belowground, or when one is aboveground and the other is belowground, or where the size of the customer's demand or any unusual character of the customer's location requires, the city will make the necessary connections from its service conductors to the customer's entrance conductors as in subsection (d)(1) of this section if applicable, or as in subsection (d)(3) of this section if applicable. If neither subsection (d)(1) of this section nor subsection (d)(3) of this section is applicable, the connection shall be at a point acceptable to the city.

(3) When, in the city's opinion, an individual transformer installation is necessary to serve the customer's demand and such demand exceeds the capacity of a pole-type transformer installation, the city may require the customer, at the customer's expense, to provide suitable outdoor space on his premises to accommodate a ground-type transformer installation or substation. If the customer is unable to provide outdoor space for a ground-type transformer installation or substation, then the city may require the customer to provide a transformer vault built to the city's specifications on the customer's premises.

a. When the incoming service is overhead and the customer provides space for a ground-type transformer installation or

substation, the city will erect a structure outside of and immediately adjacent to the fence surrounding such installation and will connect to the customer's entrance conductors at that point. The city may require the customer to provide main disconnecting switches at the point of connection, which switches shall control all of the customer's load other than the fire pump circuit, if any. If the space agreed upon for such installation is adjacent to one or more of the customer's building walls, the city will connect to the customer's entrance conductors on the outside of one of the walls.

- b. When the customer provides a transformer vault, such vault shall be constructed in accordance with the city's specifications, and shall meet the requirements of the National Electrical Safety Code and other applicable safety codes and ordinances, and its location shall meet the city's requirements for accessibility and ventilation. The city will provide and install the transformers and necessary associated equipment including circuit breakers, switches, supporting structures for equipment, primary cable and secondary cable to the point of connection with the customer's entrance conductors, which point shall be 12 inches inside one of the walls of the vault. The city will also provide and install the primary cable from the customer's vault to the city's existing distribution facilities, in accordance with the city's requirements for contributions in aid of construction, and the customer will be responsible for providing all duct lines specified by the city.

- (4) With respect to any service after a service connection has been made, it may be

changed by the city upon request of the customer or to cause compliance with this article, but the customer must bear the expense of the change, and the change will not be made where it will interfere with or jeopardize the city's service, either to the customer desiring the change or to any other customer.

(Code 1973, § 7-11)

Sec. 30-74. Ownership of equipment.

All conductors and conduits, inside work and equipment, switches, fuses and circuit breakers, from the point of connection with the city's service shall be installed and maintained by and at the expense of the customer. All equipment furnished by the city shall be and remain the property of the city, except for the meter base itself.

(Code 1973, § 7-12)

Sec. 30-75. Attachment to structures.

No equipment or facilities owned by the customer or others may be attached to poles or other structures owned by the city, except where such attachments are part of another utility system and are subject to the terms of a joint use agreement, or except where such attachment has been otherwise approved by the city.

(Code 1973, § 7-13)

Sec. 30-76. Meters generally.

(a) The city will furnish all necessary meters. When a meter is moved from one location to another, all expenses in connection with such removal shall be borne by the city, except where the removal is at the request of the customer or required to cause compliance with this article, in which case, the expense will be borne by the customer. The city shall have the right, at its option, to place demand meters, volt meters or any other instruments or devices on the premises of the customer for the purpose of making any tests or measurements with respect to the customer's service at any time and in any manner without the permission of the customer.

(b) Meters for all residential service, and for all other service to the extent practicable, shall be located out-of-doors on the customer's structure at a place or point specified by the city which meets all the city's requirements for reading, testing, service accessibility and safety.

(c) Where it is not practicable, in the city's opinion, to locate the meter and its associated apparatus, if

any, out-of-doors, the customers shall provide a suitable indoor location which meets all of the city's requirements for reading, testing, service accessibility and safety, and shall make such meter readily accessible at any time when so requested by the city. The city shall also have the right to enter upon the customer's premises at any time with the customer's permission for any purpose under this subsection.

(d) In case of the inaccuracy of a meter, the customer's bill for the period of such inaccuracy, not to exceed 60 days prior to the last meter reading by the city, may be adjusted up or down as required to compensate for any meter inaccuracy exceeding four percent slow or fast, respectively.

(Code 1973, §§ 7-14--7-16)

Sec. 30-77. Bills due where no notice received.

(a) All meters are read monthly and all bills are due and payable on the date of the bill during regular business hours at the office of the city. Bills are past due and delinquent after the 15th day of each month.

(b) Failure to receive a statement which has been properly mailed or hand-delivered or posted on the customer's premises will not entitle the customer to any delay in paying the amount due beyond the date when the bill is due and payable.

(c) The word "month" as used in this section, and as used in the rate schedules of the city, shall be construed to mean the period of time between regular meter readings by the city. Meters with a constant of one may be read to the nearest ten kilowatt hours except in case of the initial or final bill. For purposes of establishing billing demand and minimum bills, the nearest whole kilowatt shall be used.

(Code 1973, § 7-18)

Sec. 30-78. Where meter not read.

Where a meter for any reason is not read at the regular reading time, the city may calculate the amount of service used with reference to the customer's normal consumption for a similar billing period during the 12 months next preceding the billing period in question, and make any adjustment in the bill rendered when the meter is next read; or the city may, in such event, render the customer a bill for the minimum charge, such charge to be credited to the customer when the meter is next read and bills computed for 30-day intervals.

(Code 1973, § 7-19)

Sec. 30-79. Offsets against bills.

No claim or demand which the customer may have against the city shall be set off or counterclaimed against the payment of any sum of money due the city by the customer for services rendered, and all such sums shall be timely paid in accordance with this article regardless of such claim or demand.

(Code 1973, § 7-20)

Sec. 30-80. Responsibility beyond delivery point.

It is understood and agreed that the city is merely a furnisher of electricity, deliverable at the point where it passes from the city's wires to the service wires of the customer, or through the divisional switch separating the customer's wires and equipment from the city's wires and equipment, where such a switch is installed. The city shall not be responsible for any damage to the buildings, motors, apparatus or other property of the customer due to lightning, defects in wiring or other electrical installations, defective equipment or any other cause. The city shall not be in any way responsible for the transmission, use or control of electricity beyond the delivery point, and shall not be liable for any injury to any person or property whatsoever, or death of any person arising, accruing or resulting in any manner, from the receiving or use of such electricity; and the city likewise in no way guarantees the continuous, uninterrupted supply of electrical energy.

(Code 1973, § 7-21)

Sec. 30-81. Interference with city property.

The customer shall not interfere with or alter the city's meters, seals or other property or permit the same to be done by any party. Damage caused or permitted by the customer to such property shall be paid for by the customer and such interference shall be a general misdemeanor. The customer shall make all reasonable efforts to protect the city's equipment from damage and to provide security therefor.

(Code 1973, § 7-22)

Sec. 30-82. Resale service.

Electricity is sold and delivered upon the express condition that the customer shall not directly or indirectly sell, resell, assign or otherwise dispose of the electricity so sold and delivered unto any third party.

(Code 1973, § 7-23)

Sec. 30-83. Foreign electricity.

The customer shall not use the city's electric service in parallel with other electric service, nor shall other electric service be introduced on the premises of the customer for use in conjunction with or as a supplement to the city's electric service, without the written consent of the city, and this prohibition shall specifically include the customer's use of any form of electrical energy generating equipment. (Code 1973, § 7-24)

Sec. 30-84. Service interruptions.

(a) The city does not guarantee continuous service. It shall use reasonable diligence at all times to provide uninterrupted service and to remove the cause in the event of failure, interruption, reduction or suspension of service; but the city shall not be liable for any loss or damage to a customer or to their property or to the property of others resulting from such failure, interruption, reduction or suspension of service which is due to any accident or other cause beyond its control, or to any of the following:

- (1) An emergency action due to an adverse condition or disturbance on the system of the city, or on any other system directly or indirectly interconnected with it, which requires automatic or manual interruption of the supply of electricity to some customers or areas in order to limit the extent of damage by the adverse condition or disturbance, to expedite restoration of service or to effect a reduction in service to compensate for any emergency condition on an interconnected system.
- (2) An act of God, or the public enemy, or insurrection, riot, civil disorder, fire or earthquake, or an order or regulation of a federal, state, county or other public or governmental authority.
- (3) Making necessary adjustments to, changes in or repairs to its lines, substations and facilities and in cases where, in its opinion, the continuance of service to a customer's premises would endanger persons or property.

(b) It is expressly understood and agreed that the city does not furnish power for pumping water or other chemicals for extinguishing fires; and in the event that the consumer shall use such electric power for pumping water

or other chemicals to be used for extinguishing fires, the consumer shall at all times provide for an adequate reserve supply of water so that it shall not be necessary to pump water by means of such electric power during a fire. It is expressly understood and agreed that the city shall not, in any event, be liable to the consumer, nor to any person for any loss or injury to property or persons by fire occasioned by, resulting directly or indirectly from the failure of any pump, pumping apparatus or other appliance to operate. The city shall not, in any event, be liable for any loss or damage occasioned by fire which may be caused by or result from the failure of the city to supply electric power to operate any pump or pumping apparatus or other appliances. (Code 1973, § 7-25)

Sec. 30-85. Discontinuance of service.

The city shall have the right to suspend its service for repairs or other necessary work on its lines or systems, or to suspend or discontinue its service for any of the following reasons:

- (1) For any misrepresentation as to the identity of the consumer entering the contract for service, or the failure by a consumer to notify the city of a change in ownership or occupancy.
- (2) For violation by the customer of any terms or conditions of any agreement between the city and a customer or violation of any portion of this article.
- (3) If the customer's use of the city's service is detrimental to the service of other customers.
- (4) If the customer's use of the city's service conflicts with or violates laws or regulations of the federal government, the state government, or any subdivision thereof.
- (5) If wiring, equipment, appliances or devices are installed or in use on the customer's premises, which permit electricity to be used without passing through the city's meter, or which prevents or interferes with the measuring of electricity by the city's meter.
- (6) For the nonpayment of any bill, when due, for service rendered either at the existing

location of the customer or at any former location, or the failure of the customer to provide any information when requested by the city.

- (7) Upon failure or refusal of the customer to make, restore or increase his deposit as required, or the customer's refusal to allow city personnel or agents upon the customer's premises for any lawful reason.

(Code 1973, § 7-26)

Sec. 30-86. Removal of equipment.

Upon discontinuation of service or the expiration of any contract a customer may have with the city, it shall be lawful for the city to remove its meters, apparatus, appliances, fixtures or other property and to enter upon the customer's premises without the permission of the customer.

(Code 1973, § 7-27)

Sec. 30-87. Waiver of default.

Any delay or omission on the part of the city to exercise its right to discontinue or suspend service or the acceptance of a part payment of any amount due, shall not be deemed a waiver by the city of any rights the city may have under the terms of this article, so long as any default in whole or in part or breach of contract on the part of the customer shall continue, and whenever and as often as any default or breach of contract shall occur.

(Code 1973, § 7-28)

Sec. 30-88. Reconnection fee.

(a) In the case of a discontinuance of service for any reason except repairs or other necessary work by the city, the customer shall pay the city the currently required reconnection charge before service will be restored.

(b) Where service has been discontinued for any reason, except for repairs or other necessary work by the city, the city shall have the right to refuse service at the same premises to any other applicant who is a member of the family of, a successor of, a grantee of or a lessee of the former customer or who resides or does business with the former customer on such premises.

(Code 1973, § 7-29)

Sec. 30-89. Copies of service regulations, etc.

Forms of application, service agreement, or contract, schedules of rates and copies of service regulations

shall be available at the office of the city and will be furnished to the customer on request during normal business hours.

(Code 1973, § 7-30)

Sec. 30-90. Types of service--Residential service.

(a) Residential electrical service will be supplied per the residential schedule to an individual residence or individually metered apartment unit. The residential service schedules shall be applicable to only one meter serving an individual residence or an individual apartment unit.

(b) Outbuildings, water pumps and other uses which form a part of the general living establishment on the same property may be connected to the residential service meter, or they may be separately metered.

(c) Residential service to two or more residences on the same property or to a residence subdivided into two or more individual housekeeping apartments or units may not be supplied through one meter on the residential service schedule.

(d) Individual meters shall be installed by the city for each individual residence, housekeeping apartment or housekeeping unit.

(Code 1973, § 7-31(a))

Sec. 30-91. Same--Commercial and industrial service.

Electrical service under the commercial and industrial service schedule is available to customers classified as manufacturing industries as determined by the city.

(Code 1973, § 7-31(b))

Sec. 30-92. Same--Breakdown and standby service.

The city does not supply breakdown or standby service and service under its rate schedules may not be used for resale or exchange or in parallel with other electric power or as a substitute for power contracted for or which may be contracted for.

(Code 1973, § 7-31(c))

Sec. 30-93. Same--Temporary service.

Temporary service for construction of buildings or other establishments or improvements which will receive, upon completion, permanent electric service from the city's lines will be provided under the appropriate service schedule

designated by the city upon payment of an installation cost of \$10.00. Temporary service for other projects, such as crushers, asphalt plants, carnivals, fairs and other nonpermanent installations will be provided on the appropriate service schedule designated by the city where the customer agrees to pay the actual cost of connection and disconnection. The cost shall include payroll, transportation and miscellaneous expenses for both erection and dismantling of the temporary facilities, plus the cost of material used. A deposit may be required equal to the estimated cost of connection and disconnection plus the estimated billing on the applicable service schedule for the period involved; provided, that such deposit may be returned if the contract period is fulfilled.
(Code 1973, § 7-31(d))

Sec. 30-95. Rates generally.

(a) Charges levied for electric service furnished by the city shall be as set from time to time by resolution of the city council. A copy of such resolution shall be kept on file in the office of the city clerk.

(b) A class of electric service is hereby established for senior citizens and blind or disabled customers. To qualify for and be included in this class of service, the customer must meet all of the following conditions and requirements:

- (1) The customer shall be 62 years of age or older, or be totally blind, or be totally physically or mentally disabled.
- (2) The customer shall be receiving benefits from the Social Security Administration.
- (3) The customer shall have the electric service in his name and be a customer of the city.
- (4) The customer's total gross annual income, including the gross annual income from all residents in the customer's household, shall not exceed \$12,000.00.
- (5) The customer's total annual consumption of electric power shall not exceed 9,000 kilowatt hours.

(c) Application forms shall be provided by the city and, upon completion by the customer, whose signature shall be acknowledged by a notary public, be submitted to the city manager or his agent for approval. Any customer whose application is not approved shall be so notified in writing by

mail within 30 days after the date of receipt of the application by the city manager. Applications which are approved may be reviewed by the city manager or his agent at any time as to compliance with this section, and upon failure to comply, written notice to the customer shall be given by mail within 30 days of the date of discovery of noncompliance. Any customer whose application has not been approved or whose application has been approved but thereafter, after review, has been found to fail to meet the stated qualifications may, within ten days after such notice, request a hearing before the city manager for a review of his application. In all cases the burden of proof shall be upon the customer as to the contents of the application and facts pertaining to qualification and compliance.

(d) The rate for electric service for this class shall be set from time to time by resolution of the city council, a copy of which resolution shall be kept on file in the office of the city clerk.

(Code 1973, §§ 21-15, 21-15.1)

State Law References: Authority of city to fix and enforce rates, G.S. 160A-314.

Sec. 30-96. Good faith deposits.

Before any electric service shall be connected for an applicant for such service, such applicant shall make a good faith deposit as set by resolution of the city council from time to time. A copy of such resolution shall be kept on file in the office of the city clerk.

(Code 1973, § 21-16)

Sec. 30-97. Procedures for determination and collection of service charges.

Procedures for determining and collecting the proper service charge for persons receiving electric service from the city shall be established by the city manager in accordance with the rates established under section 30-95.
(Code 1973, § 21-17)

Secs. 30-98--30-115. Reserved.

ARTICLE IV.

SEWER SERVICE*

* **Cross References:** Capital reserve water and sewer fund, § 26-36 et seq.

State Law References: Sanitary sewage systems, G.S. 130A-333 et seq.; authority to regulate sewage tie-ons in certain counties, G.S. 160A-196; public enterprises generally, G.S. 160A-311 et seq.

DIVISION 1. GENERALLY

Sec. 30-116. Definitions.

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

Authority means the mayor and city council.

BOD (denoting biochemical oxygen demand) means a measure of the degree of pollutional strength of wastes of biodegradable nature. BOD, expressed in milligrams per liter, shall mean the calculated pounds of oxygen required to satisfy the five-day biochemical oxygen demand of a million pounds of domestic sewage or industrial waste, or a combination of both when tested for five-day BOD in accordance with the procedures acceptable to the approving authority.

COD (denoting chemical oxygen demand) means a measure of the degree of pollutional strength of industrial wastes. COD tests allow measurements of industrial wastes in terms of total quantity of oxygen required for the chemical oxidation of organic matter to carbon dioxide and water. COD tests are conducted in accordance with the procedures acceptable to the approving authority and the COD values are generally expressed in milligrams per liter.

Color means the true color of water from which turbidity has been removed and is expressed in milligrams per liter.

Commercial user means any private establishment such as restaurants, hotels, stores, filling stations or recreational facilities with dry weather wastewater flows less than 25,000 gallons per day.

Composite sample means a combination of discrete samples of wastewater taken at equal time intervals over the compositing period or proportional to the flow rate over the compositing period.

Cooling water means the water discharged from any system of condensation such as conditioning, cooling or refrigeration.

Domestic sewage means a combination of the water-carried, normal strength sewage from residences, business buildings, institutions and the like, but excluding industrial process wastes.

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Grab sample means an individual sample collected over a period of time not exceeding 15 minutes.

Industrial user means any of the following:

- (1) A nongovernmental, nonresidential user which discharges more than the equivalent of 25,000 gallons per day of sanitary waste and which is identified in the Standard Industrial Classification Manual under divisions A, B, D, E and I;
- (2) A user which discharges any wastewater containing toxic pollutants or which has any other adverse effect on the treatment works; and
- (3) A commercial use of an individual system.

Industrial waste means the liquid, solid and gaseous wastes, including the suspended solids, resulting from the processes employed in industrial establishments. Industrial waste includes the cooling waters and unpolluted process waters discharged to the sewerage system.

Infiltration means the water entering the sewerage system and service connections from the ground through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls. Infiltration does not include, and is distinguished from, inflow.

Inflow means the water discharged into the sewerage system, including service connections, from such sources as, but not limited to, roof leaders, cellar, yard and area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections from combined sewers and storm sewers, catchbasins, stormwaters, surface water runoff, street washwaters or drainage. Inflow does not include, and is distinguished from, infiltration.

Milligrams per liter means the weight of a substance in milligrams in one liter of water.

Natural outlet means any body of water, stream or watercourse receiving the discharge waters from the sewage treatment plant.

Nitrogen, ammonia (NH₃-N) means a chemical

combination of hydrogen and nitrogen occurring extensively in nature. The combination used in water and wastewater is expressed as NH₃-nitrogen.

Normal strength sewage means sewage which, when analyzed by the city, shows by weight a daily average of not more than 2,085 pounds per million gallons (250 milligrams per liter) of suspended solids, and not more than 2,085 pounds per million gallons (250 milligrams per liter) of BOD, and which is otherwise acceptable into a public sewer under the terms of this article.

pH means the logarithm (base 10) of the reciprocal of the weight of hydrogen ions in gram-moles per liter of solution and indicates the acidity or alkalinity of substance. pH scale is usually represented as ranging from 0 to 14, with pH 7 representing absolute neutrality. A stabilized pH will be considered a pH which does not change beyond the specified limits when the waste is subjected to aeration. pH below 7.0 is acid, above alkaline.

Properly shredded garbage means the garbage which has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in sanitary sewers, with no particles greater than one-quarter inch in dimension.

Sanitary sewer means a sewer which carries sewage or industrial wastes and to which stormwaters, surface waters and groundwaters are not intentionally admitted.

Sewage means a combination of domestic sewage and industrial wastes.

Sewage treatment plant means any arrangement of devices and structures used for the treatment of sewage.

Sewer means a pipe or conduit for carrying sewage.

Sewerage system means all facilities for collecting, pumping, treating and disposing of sewage.

Significant industrial user means any industrial user of the city's sewerage system whose flow exceeds 50,000 gallons per day or five percent of the daily capacity of the sewage treatment plant.

Storm sewer or storm drain means a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes.

Stormwater means any flow occurring during or immediately following any form of natural precipitation and

resulting therefrom.

Suspended solids means the total suspended matter that floats on the surface of, or is suspended in, water, sewage or other liquids and which is removable by laboratory filtering.

Toxic substance means any substance whether gaseous, liquid or solid which, when discharged to a sanitary sewer in sufficient concentrations, may, in the opinion of the approving authority, be hazardous to sewer maintenance and personnel, tend to interfere with any sewage treatment process, to constitute a hazard to human beings and animals, to inhibit aquatic life or to create a hazard to recreation in the receiving waters of the effluent from a sewage treatment plant.

Unpolluted water means water not containing any pollutants or water whose discharge will not cause any violation of receiving water quality standards.

User means any person who discharges or causes or permits the discharge of wastewater into the sewerage system.

(Code 1973, § 21-19)

Cross References: Definitions generally, § 1-2.

Sec. 30-117. Violations and penalties.

(a) Any user who violates any provision of this article or of applicable state and federal regulations is subject to having the permit revoked upon 24-hour notice by the approving authority.

(b) Should any user violate any provision of this article or of applicable state and federal regulations such user is subject to having such user's connection with the city water and/or sewerage system severed upon being given 24-hour notice by the approving authority.

(c) In addition to all other remedies either provided in this article or in the general law, the city may apply to a court of competent jurisdiction for an injunction against any violation of this article.

(d) Violation of any provision of this article shall be a misdemeanor punishable in accordance with section 1-11.

(Code 1973, § 21-55)

Sec. 30-118. Damage, destruction, etc., of equipment or materials.

No person or user shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any equipment or materials belonging to the city and used for the purpose of making measurements, tests or examinations and left upon the premises of a person or user discharging wastes into the sewer. This protection against damage shall also apply to any part of the public sewer system. Any person or user violating this section shall be subject to immediate arrest and prosecution.
(Code 1973, § 21-20)

Sec. 30-119. Erection of privies.

It shall be unlawful for any person to build, construct or otherwise erect a privy for use in connection with a house, building or other structure used for human habitation.
(Code 1973, § 21-21)

Sec. 30-120. Installation and connection of sewerage facilities within houses, etc.

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the corporate limits of the city and abutting on any street, alley or right-of-way in which there is located a public sanitary sewer of the city are hereby required to install suitable water-carried sewerage facilities therein and to connect such facilities directly with the public sanitary sewer in accordance with the rules and regulations governing such system.
(Code 1973, § 21-22)

State Law References: Authority of city to require connection, G.S. 160A-317.

Sec. 30-121. Connection fees.

Fees imposed for the connection of an application for sewer service to a main sewer line of the city shall be as established by resolution of the city council from time to time. Such resolution shall be kept on file in the office of the city clerk.
(Code 1973, § 21-23)

Sec. 30-123. Uncovering or injuring sewers.

No person or user shall uncover the public sewer in the city for any purpose, uncover any of the connecting branches thereof or open any manhole or flush tank in the city, except with written consent of the director of public works, or shall do or cause to be done any injury of any kind in any manner to any part of the sewers of the city, or to the outlet pipe or to any of the appliances of sewers.

(Code 1973, § 21-25)

Sec. 30-124. Wastes excessive in quantity or with considerable variation in polluttional value.

Whenever the total volume of wastes to be discharged by any user in any one day shall exceed the limits set forth in section 30-231 et seq. or where such wastes have considerable variation in polluttional value, such user shall be required to construct holding or storage tanks in order to equalize the discharge of wastes over a 24-hour period. Such tanks shall be so equipped as to thoroughly mix the waste so that its quality shall be uniform when discharged to the public sewers.
(Code 1973, § 21-26)

Sec. 30-125. Grease, oil and sand interceptors.

Grease, oil and sand interceptors shall be provided when, in the opinion of the approving authority, they are necessary for the proper handling and control of liquid wastes containing grease, oil or sand in excessive amounts. Such interceptors shall not be required for private living quarters or dwelling units but may be required for industrial or commercial establishments, public eating places, hospitals, hotels, abattoirs or other institutions. Such interceptors shall be readily accessible for cleaning and inspection and shall be maintained by the owner at his expense and in continuously efficient operation at all times.
(Code 1973, § 21-27)

Sec. 30-126. Standards for tests and analyses; point at which tests and analyses are to be run.

All tests and analyses of the characteristics of waters and wastes to which reference is made in this article shall be made in accordance with the procedures given in the latest edition of Standard Methods for Examination of Water and Sewage published by the American Public Health Association. Such tests and analyses shall be determined at the control manhole or at the point of discharge of any waters or wastes at the site of their origin on the premises of any person discharging such wastes into the sanitary sewers.
(Code 1973, § 21-28)

Sec. 30-127. Right of city employees to enter to inspect, measure, etc.

The approving authority and duly authorized employees of the city shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this article. The city shall notify, if available, a

representative of the company or individual prior to entering the premises.

(Code 1973, § 21-29)

Sec. 30-128. Maintenance of preliminary treatment or holding facilities.

Where preliminary treatment or holding facilities are provided for any purpose, they shall be maintained continuously in satisfactory and effective operation by the user at his own expense.

(Code 1973, § 21-30)

Sec. 30-129. Amendment of article.

The city, through its duly qualified officers, reserves the right to amend this article in part or in whole whenever it may deem necessary.

(Code 1973, § 21-31)

Sec. 30-130. Regulatory actions.

If wastewaters containing any substance described in division 2 of this article are discharged or proposed to be discharged into the sewerage system of the city, the approving authority shall require the user making, causing or allowing the discharge to pay any additional cost or expense incurred by the city for sampling, handling and treating excess loads imposed on the treatment system. In addition to the above provision, the approving authority may take other corrective actions as follows:

- (1) Require a discharger to demonstrate that in-plant modifications will reduce or eliminate the discharge of such substances in conformity with this article.
- (2) Require pretreatment, including storage facilities or flow equalization necessary to reduce or eliminate the objectionable characteristics or substances so that the discharge will not violate the provisions of this article.

(Code 1973, § 21-51)

Sec. 30-131. Pretreatment facility operation.

If pretreatment or control of waste flows is required, such facilities shall be maintained in good working order and operated as efficiently as possible by the user at his own cost and expense, subject to the requirements of this article and all other applicable codes and laws.

(Code 1973, § 21-52)

Sec. 30-132. Accidental discharge--Protection from.

Each industrial user shall provide protection from accidental discharge of prohibited materials or other wastes regulated by this article. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the approving authority for review and shall be approved by it before construction of the facility. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify his facility with the subsequent approval of the approving authority as necessary to meet the requirements of this article.

(Code 1973, § 21-53)

Sec. 30-133. Same--Reporting.

If for any reason a user does not comply with or will be unable to comply with any prohibitions or limitations in this article, the user responsible for such discharge shall immediately notify the approving authority so that action may be taken to protect the treatment system. In addition, a written report addressed to the approving authority detailing the date, time and cause of the accidental discharge, the quantity and characteristics of the discharge and corrective action taken to prevent further discharges, shall be filed by the responsible user within five days of the occurrence of the noncomplying discharge.

(Code 1973, § 21-54)

Secs. 30-134--30-145. Reserved.

DIVISION 2.

DISCHARGES INTO SYSTEM

Sec. 30-146. Types generally prohibited.

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

- (1) Any clothing, rags, textile remnants or wastes, cloth, scraps, etc., except fibers, scraps, etc., which will pass through a one-fourth inch mesh screen or its equivalent in screening ability.
- (2) Any liquid or vapor having a temperature higher than 160 degrees Fahrenheit.
- (3) Any waters or wastes containing more than

75 parts per million by weight of fats, oils or grease.

collection system or the sewage treatment works.

- (4) Any liquids, solids or gases which by reason of their nature or quality may cause fire or explosion or be in any way injurious to persons, the sewerage system, the sewage treatment works or the operation of the sewage treatment works.
- (5) Any liquid wastes in which the suspended solids exceed 320 parts per million by weight.
- (6) Any wastes having a BOD of more than 320 parts per million, except as hereinafter provided for.
- (7) Any waters or wastes having a stabilized pH lower than 5.0 or higher than 11.0 or having other corrosive properties capable of causing damage or hazard to structures, equipment or personnel of the sewage works.
- (8) Any waters or wastes containing poisonous or toxic substances or any other materials in sufficient quantity to injure or interfere with any sewage treatment process, or constitute a hazard to humans or animals or create any hazard in the receiving stream at the sewage treatment plant.
- (9) Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.
- (10) Any noxious or malodorous gas or substance capable of creating a public nuisance.
- (11) Any garbage that has not been properly shredded.
- (12) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, bones, feathers, tar, plastics, wood, paunch manure, butcher's offal or any other solid or viscous substances capable of causing obstruction to the flow in sewers or other interferences with the proper operation of the sewage

- (13) Any materials which form excessive amounts of scum that may interfere with the operation of the sewage treatment works or cause undue additional labor in connection with its operation.

- (14) Any waters or wastes containing dyes or other color which cannot be removed by biological processes and which require special chemical treatment.

- (15) No waters or wastes containing heavy metals and similar objectionable or toxic substances to such degree that any such material received in the composite sewerage at the point of entrance to the treatment plant exceeds the limit established below:

Pollutant	Concentration (mg/l)
Arsenic	0.10
Chromium (total)	0.50
Chromium (trivalent)	0.25
Chromium (hexavalent)	0.25
Cadmium	0.20
C.O.D.	1,200.00
Copper	0.50
Cyanide	0.34
Iron	5.0
Lead	0.10
Magnesium	50.0
Manganese	10.0
Mercury	0.1
Nickel	0.25
Phenol	75.0
Selenium	5.0
Silver	.03
Zinc	.50

(Code 1973, § 21-32)

Sec. 30-147. Water generally.

No person shall discharge or cause to be discharged into any sanitary sewers any stormwater, surface water, groundwater, roof runoff, subsurface drainage, cooling water or unpolluted industrial or commercial process water.
(Code 1973, § 21-33)

Sec. 30-148. Stormwater and surface drainage; process and cooling waters.

Stormwater and surface drainage shall be admitted to only such sewers as are specifically designated as combined sewers, storm sewers or storm drains. Unpolluted process and cooling waters may, upon written application and approval by the approving authority, be discharged into storm sewers or storm drains.

(Code 1973, § 21-34)

Secs. 30-149--30-160. Reserved.

DIVISION 3.

CHARGES AND BILLING

Sec. 30-161. User charge.

(a) The city council shall adopt at least annually an adequate schedule of user charges and surcharges to defray the cost of operating and maintaining the city's sewerage system. The costs to be used as a basis for determining the charges shall include, but are not necessarily limited to, direct operation and maintenance, administration, collection and billing of charges, bond redemption, studies and reports, professional fees, repairs, capital improvements and capital reserve.

(b) The charges adopted shall be such that each user pays their proportionate share of all costs to operate and maintain the sewer system. The user charges and surcharges shall be published on a form for public distribution and notice and shall become a part of this Code upon adoption by the city council.

(Code 1973, § 21-46)

Sec. 30-162. Surcharge.

The approving authority may allow a user to discharge industrial wastes whose waste exceeds the limitations of article V of this chapter, provided, that the user discharging such waste shall agree to the payment of a surcharge to offset the entire cost incurred by the city in treating wastes containing five-day BOD, suspended solids or ammonia-nitrogen in excess of allowable limits. This surcharge shall be imposed in addition to any other charges made for sewer service. The surcharge rates are to be updated annually.

(Code 1973, § 21-47)

Sec. 30-163. Basis for charges.

(a) *Residential, commercial and industrial users.* All residential, commercial and industrial users will pay a user charge in accordance with section 30-161 and based upon 100 percent of their water usage as obtained from the water meter readings except as allowed in article V for industrial users.

(b) *Industrial users.* All industrial users will pay, in addition to the above, the following fees and charges based upon 100 percent of their water usage as obtained from the water meter readings:

- (1) Surcharges resulting from additional costs incurred by the city in treating wastes containing five-day BOD, suspended solids and ammonia-nitrogen in excess of allowable limits.
- (2) Fees resulting from the sampling and analysis of industrial or commercial wastewaters.

Measurement and spot check of flow rates, flow volumes, five-day BOD, suspended solids and ammonia-nitrogen for use in determining the above described charges shall be made by the city on all industrial wastewaters, unless specifically relieved of such obligation by the director. The charges shall be based on the usage during the previous month. In case of a violation, the user shall be billed for the violation for the period of time for which the violation occurs as determined by the most frequent monitoring program in which the testing procedure is acceptable to the city as specified in article V of this chapter.

(Code 1973, § 21-48)

Sec. 30-164. Billing.

(a) *Residential, commercial and industrial users.* All residential, commercial and industrial users shall be billed monthly by the city.

(b) *Industrial users.* Other charges, surcharges and any other applicable costs as set forth in this section shall be billed and payable monthly on a separate bill rendered to the user by the city. All the charges, surcharges, fees and formulas for such cost will be as specified in the schedule on file in the city clerk's office.

(Code 1973, § 21-49)

Sec. 30-165. Failure to pay.

Failure to pay user charges and surcharges within 16 days of the billing date shall cause such bills to become

delinquent. After five days of delinquency, the director may take any action necessary to recover such bills.
(Code 1973, § 21-50)

Secs. 30-166--30-185. Reserved.

ARTICLE V.

WASTEWATER PRETREATMENT*

* **Cross References:** Environment, ch. 14.

DIVISION 1.

GENERALLY

Sec. 30-186. Scope.

This article sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the city.
(Code 1973, § 21-56)

Sec. 30-187. Objectives.

- (a) The objectives of this article are:
- (1) To prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
 - (2) To prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system;
 - (3) To improve the opportunity to recycle and reclaim wastewaters and sludges from the system; and
 - (4) To provide for equitable distribution of the cost of the municipal wastewater system.
- (b) This article provides for the regulation of direct and indirect contributors to the municipal wastewater system through the issuance of permits to certain nonresidential users and through enforcement of general requirements for other users, authorizes monitoring and

enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the regulations established in this article.
(Code 1973, § 21-56)

Sec. 30-188. Application of article.

This article shall apply to the city and to persons outside the city who are, by contract or agreement with the city, users of the city POTW (publicly owned treatment works). Except as otherwise provided herein, the superintendent of the city POTW shall administer, implement and enforce the provisions of this article.
(Code 1973, § 21-56)

Sec. 30-189. Definitions.

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

Act or the Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

Approval authority means the director of the state division of environmental management or an authorized representative of the same.

Authorized representative of industrial user means:

- (1) An executive officer, if the industrial user is a corporation;
- (2) A general partner or proprietor, if the industrial user is a partnership or proprietorship, respectively; or
- (3) A duly authorized representative of the individual designated above, if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in terms of weight and concentration (milligrams per liter (mg/l)).

Building sewer means a sewer conveying wastewater from the premises of a user to the POTW.

Categorical standards means the National Categorical Pretreatment Standards or pretreatment standard.

Control authority means the superintendent.

Cooling water means the water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant, substance or process added is heat.

Direct discharge means the discharge of treated or untreated wastewater directly to the waters of the state.

Environmental Protection Agency or *EPA* means the United States Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of such agency.

Grab sample means a sample which is taken from a waste stream on a one-time basis, with no regard to the flow in the waste stream and without consideration of time.

Holding tank waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

Indirect discharge means the discharge or the introduction of nondomestic pollutants from any source regulated under section 307(b) or (c) of the Act (33 U.S.C. 1347) into the POTW, including holding tank waste discharged into the system.

Industrial user means a source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to section 402 of the Act (33 U.S.C. 1342).

Interference means the inhibition or disruption of the POTW treatment processes or operations which contributes to a violation of any requirement of the city's NPDES (national pollution discharge elimination system) permit. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act (33 U.S.C. 1345) or any criteria, guidelines or regulations developed pursuant to the Solid Waste Disposal Act (SWDA), the Clean Air Act, the Toxic Substances Control Act or more stringent state criteria, including those contained in any state sludge management plan prepared pursuant to title IV of SWDA, applicable to the method of disposal or use employed by the POTW.

National Categorical Pretreatment Standard or *pretreatment standard* means any regulation containing pollutant discharge limits, promulgated by the EPA in accordance with section 307(b) and (c) of the Act (33 U.S.C. 1347), which applies to a specific category of industrial users.

National Pollution Discharge Elimination System (NPDES) permit means a permit issued pursuant to section 402 of the Act (33 U.S.C. 1342).

National Prohibitive Discharge Standard or *prohibitive discharge standard* means any regulation developed under the authority of section 307(b) of the Act and 40 CFR, section 403.5.

New source means any source, the construction of which is commenced after the publication of proposed regulations prescribing a section 307(c) (33 U.S.C. 1317) Categorical Pretreatment Standard which will be applicable to such source, if such standard is thereafter promulgated within 120 days of proposal in the Federal Register. Where the standard is promulgated later than 120 days after proposal, a "new source" means any source, the construction of which is commenced after the date of promulgation of the standard.

Person means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns.

pH means the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

Pollutant means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

Pollution means the manmade or man-induced alteration of the chemical, physical, biological and radiological integrity of water, regardless of whether such alteration involves manmade or natural substances or processes.

POTW treatment plant means that portion of POTW designed to provide treatment to wastewater.

Pretreatment or treatment means the reduction of the amount of pollutants, the elimination of pollutants, the alteration of the nature of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes by other means, except as prohibited by 40 CFR section 403.6(d).

Pretreatment requirements means any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard imposed on an industrial user.

Publicly owned treatment works (POTW) means a treatment works as defined by section 212 of the Act (33 U.S.C. 1292) which is owned by the city. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of this article, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, users of the city's POTW.

Significant industrial user means any industrial user of the city's wastewater disposal system who:

- (1) Has a discharge flow of 25,000 gallons or more per average work day;
- (2) Has a flow greater than five percent of the flow in the city's wastewater treatment system;
- (3) Has in his wastes, toxic pollutants as defined pursuant to section 307 of the Act or state law and rules, or
- (4) Is found by the city, any state agency or authority of the United States Environmental Protection Agency to have significant impact, either singly or in combination with other contributing industries, on the wastewater treatment system, the quality of sludge, the system's effluent quality or air emissions generated by the system or the user.

Standard industrial classification (SIC) means a classification established pursuant to the Standard Industrial

Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.

Stormwater means any flow of any liquid or other substance occurring during or following any form of natural precipitation and resulting, directly or indirectly, therefrom.

Suspended solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

Superintendent means the person designated by the city to supervise the operation of the publicly owned treatment works and who is charged with the primary duties and responsibilities as set out in this article, or his duly authorized representative. His official title shall be superintendent of water treatment and wastewater treatment plant.

Toxic pollutant means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the Environmental Protection Agency under the provisions of CWA 307(a) or other acts.

User means any person who contributes, causes or permits, directly or indirectly, the introduction of wastewater into the city's POTW.

Wastewater means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with any groundwater, surface water and stormwater that may be present, whether treated or untreated, which is introduced into or permitted to enter the POTW.

Wastewater contribution permit means a permit required to be issued to all significant users prior to connecting to or contributing to the POTW.

Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.
(Code 1973, § 21-57)

Cross References: Definitions generally, § 1-2.

Sec. 30-190. Abbreviations.

For the purposes of this chapter, the following

abbreviations shall have the designated meanings:

BOD means biochemical oxygen demand.

CFR means the Code of Federal Regulations.

COD means chemical oxygen demand.

EPA means the Environmental Protection Agency.

l means liter.

mg means milligrams.

mg/l means milligrams per liter.

NPDES means national pollutant discharge elimination system.

POTW means publicly owned treatment works.

SIC means standard industrial classification.

SWDA means the Solid Waste Disposal Act, 42 U.S.C. 6901 et seq.

TSS means Total suspended solids.

USC means the United States Code or United States Code Annotated, interchangeably as the case may be. (Code 1973, § 21-58)

Sec. 30-191. Penalties.

(a) *Generally.* Any user who is found to have violated an order of the city council or who willfully or negligently fails to comply with any provision of this article, or the orders, rules, regulations and permits issued hereunder, shall be fined not less than \$100.00 nor more than \$1,000.00 for each offense, but each occurrence shall constitute a separate, nonconcurrent offense. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In addition to the penalties provided herein, the city may recover attorneys' fees, court costs, court reporters' fees and all other expenses of litigation, including all fees and costs incurred in investigating such violations by appropriate suit at law against any person found to have violated this article or the orders, rules, regulations and permits issued under this article.

(b) *Falsifying information, tampering with monitoring devices, etc.* Any person who knowingly makes

any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article or the wastewater contribution permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this article, shall, upon conviction, be punished by a fine of not more than \$1,000.00 or by imprisonment for not more than six months, or by both. Each such act shall constitute a separate, nonconcurrent offense.

(Code 1973, § 21-86)

Sec. 30-192. Compliance with article.

It shall be unlawful without a permit to discharge wastewater to any natural outlet within the city or in any area under the jurisdiction of the city and/or to the POTW, except as authorized by the superintendent in accordance with the provisions of this article.

(Code 1973, § 21-69)

Sec. 30-193. Wastewater contribution permit for significant users--Required.

All significant users, as determined by the city, proposing to connect to or to contribute to the POTW shall obtain a wastewater discharge permit before connecting to or contributing to the POTW.

(Code 1973, § 21-70)

Sec. 30-194. Same--Application; issuance.

(a) Users required to obtain a wastewater contribution permit shall complete and file with the city an application, in a form prescribed by the city and accompanied by a filing fee of \$10.00. Existing users, as designated by the city, shall apply for a wastewater contribution permit within 180 days after the effective date of the ordinance from which this article derives, and proposed new users shall apply at least 180 days prior to connecting to or contributing to the POTW. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

- (1) Name, address and location of all the user's facilities.
- (2) SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended.
- (3) Wastewater constituents and characteristics, including but not limited to

those mentioned in division 2 of this article, as determined by a reliable analytical laboratory (sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and contained in 40 CFR, part 136, as amended).

- (4) Time and duration of contribution.
- (5) Average daily and peak wastewater flow rates, including daily, monthly and seasonal variations, if any.
- (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections and appurtenances by their size, location and elevation.
- (7) Description of activities, facilities and plant processes on the premises, including all materials which are or could be discharged.
- (8) Where known, the nature and concentration of any pollutants in the discharge which are limited by any city, state or federal pretreatment standards and a statement regarding whether or not the pretreatment standards are being met on a consistent basis; and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards.
- (9) If additional pretreatment and/or (O&M) will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:
 - a. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events

leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards, e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, etc.

- b. Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the superintendent including, as a minimum, whether or not the user complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay and the steps being taken by the user to return the construction to the schedule established.

- (10) Each product produced by type, amount, processes and rate of production.
- (11) Type and amount of raw materials processed, average and maximum per day.
- (12) Number and type of employees, hours of operation of plant and proposed or actual hours of operation of pretreatment system.
- (13) Any other information as may be deemed by the city to be necessary to evaluate the permit application.

(b) The city will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the city may issue a wastewater contribution permit, subject to the terms and conditions provided in this article.
(Code 1973, § 21-71)

Sec. 30-195. Same--Modification to require compliance with new pretreatment standards.

Within nine months of the promulgation of a

national categorical pretreatment standard, the wastewater contribution permit of every user subject to such standard shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a national categorical pretreatment standard, has not previously submitted an application for a wastewater contribution permit as required by section 30-194, the user shall apply for a wastewater contribution permit within 180 days after the promulgation of the applicable national categorical pretreatment standard. In addition, the user with an existing wastewater contribution permit shall submit to the superintendent, within 180 days after the promulgation of any applicable federal categorical pretreatment standard, the information required by subsections (8) and (9) of section 30-194.

(Code 1973, § 21-72)

Sec. 30-196. Same--Conditions.

Wastewater discharge permits shall be expressly subject to all provisions of this article and all other applicable regulations, user charges and fees established by the city. Permits may contain the following:

- (1) The unit charge or schedule of user charges and fees for the wastewater to be discharged into a community sewer.
- (2) Limits on the average and maximum wastewater constituents and characteristics.
- (3) Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization.
- (4) Requirements for installation and maintenance of inspection and sampling facilities.
- (5) Specifications for monitoring programs, which may include sampling locations, frequency of samplings and number, types and standards for tests and reporting schedules.
- (6) Compliance schedules.
- (7) Requirements for submission of technical reports or discharge reports, see section 30-199.
- (8) Requirements for maintaining and retaining plant records relating to

wastewater discharge as specified by the city, and affording the city access thereto without notice.

- (9) Requirements for notification of the city of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system.
- (10) Requirements for notification of slug discharges as per section 30-205.
- (11) Other conditions as deemed appropriate by the city to ensure compliance with this article.

(Code 1973, § 21-73)

Sec. 30-197. Same--Term; reissuance; modification of terms and conditions by city.

Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or any period less than five years and may be stated to expire on a specific date. The user shall apply for permit reissuance a minimum of 180 days prior to the expiration of the user's existing permit. If the period of issuance is less than a year, the application must be made not less than 30 days prior thereto. The terms and conditions of the permit may be subject to modification by the city at any time during the term of the permit, as limitations or requirements as identified in this article are modified or other just cause exists. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of any change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(Code 1973, § 21-74)

Sec. 30-198. Same--Transfer, etc.

Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned, transferred or sold to a new owner or new user, or for different or modified premises or a new or changed operation, without the prior approval of the city. Any succeeding owner or user shall also comply with the terms and conditions of the existing permit. In no case shall any permit or any interest therein or any right or right of use derived therefrom be hypothecated without the city's prior written approval.

(Code 1973, § 21-75)

Sec. 30-199. Reporting requirements for permittees.

(a) *Compliance date report.* Within 90 days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall submit to the superintendent a report indicating the nature and concentration of all pollutants in the discharge from the regulated processes which are limited by pretreatment standards and requirements, and the average and maximum daily flow for those process units in the user's facility which are limited by such pretreatment standards or requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional (O&M) and/or pretreatment is necessary to bring the user into compliance with applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user and certified to by a qualified professional in the pretreatment field.

(b) *Periodic compliance reports.*

(1) Any user subject to a pretreatment standard, after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of discharge into the POTW, shall submit to the superintendent, during the month of December, unless required more frequently in the pretreatment standard or by the superintendent, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standard. At the discretion of the superintendent and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the superintendent may agree to alter the month during which the above reports are to be submitted.

(2) The superintendent may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by subsection (1) of this section shall indicate the mass of pollutants regulated by pretreatment standards in the

user's effluent. These reports shall contain the results of sampling and analysis of the discharge, including the flow, nature and concentration, or production and mass where requested by the superintendent, of pollutants contained therein which are limited by applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard. All analysis shall be performed in accordance with procedures established by the administrator pursuant to section 304(g) of the Act and contained in 40 CFR, part 136 and amendments thereto, or with any other test procedures approved by the administrator. Sampling and analysis shall be performed by a laboratory certified by the state.

(Code 1973, § 21-76)

Sec. 30-200. Monitoring facilities.

(a) The city shall require, at the user's expense, monitoring facilities to allow inspection, sampling and flow measurement of the sewer and/or internal drainage systems. The monitoring facility should be situated on the user's premises, but the city may, when such a location would cause extreme hardship on the user, allow the facility to be constructed in the public street or sidewalk area, if located so that it will not obstruct landscaping or parking areas or impair any public or private use of such area.

(b) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility and the sampling and measuring equipment shall be maintained, at all times, in a safe and proper operating condition at the expense of the user.

(c) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the city.

(Code 1973, § 21-77)

Sec. 30-201. Inspections, sampling, etc., by city.

The city may inspect the facilities of all users to ascertain whether the purposes of this article are being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or

discharged shall allow the city or its representatives ready access at all reasonable times to all parts of their premises, for the purposes of inspection, sampling, records examination or the performance of any of their duties, with or without notice to any user. The city, approval authority, and where the NPDES state is the approval authority, the EPA, shall have the right to set up on any user's property such devices as are necessary to conduct sampling inspection, compliance monitoring and/or metering operations.

(Code 1973, § 21-78)

Sec. 30-202. Pretreatment and facilities to be provided at user's expense; plans and operating procedures; availability of records.

(a) Users shall provide necessary wastewater treatment as required to comply with this article and shall achieve compliance with all federal categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations. Any facility required to pretreat wastewater to a level acceptable to the city shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review and shall be acceptable to the city before construction of the facility.

(b) The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the city prior to the user's initiation of the changes.

(c) All records relating, directly or indirectly, to compliance with pretreatment standards shall be made immediately available to officials of the EPA, the approval authority or the city upon request.

(Code 1973, § 21-79)

Sec. 30-203. Confidentiality of information.

(a) Information and data on a user obtained from reports, questionnaires, permit applications, permits, monitoring programs and inspections shall be available to the public or other governmental agencies without restriction, unless the user specifically requests and is able to demonstrate to the satisfaction of the city that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets

of the user, but in such cases, only the public, and not other governmental agencies, will be denied the availability of such information.

(b) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this article, the national pollutant discharge elimination system, the state disposal system permit and/or the pretreatment program. However, such portions of such reports shall be available for use by any governmental agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

(Code 1973, § 21-80)

Sec. 30-204. Suspension of service or permit for harmful contributions; reinstatement procedure.

(a) The city may immediately suspend the wastewater treatment service and/or a wastewater contribution permit when such suspension is necessary, in the opinion of the city, in order to stop or prevent an actual or threatened discharge which presents, or may present, an imminent or substantial endangerment to the health or welfare of persons or to the environment, causes interference to the POTW or causes, or may tend to cause, the city to violate any condition of its NPDES permit.

(b) Any person notified of a suspension of wastewater treatment service and/or the wastewater contribution permit shall immediately stop or eliminate the contribution. Upon a failure of the person to comply with the suspension order, the city may take such steps as the city deems necessary, including, but not limited to, immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals or the environment. The city shall reinstate the wastewater contribution permit and/or the wastewater treatment service only upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the city prior to reinstatement.

(Code 1973, § 21-81)

Sec. 30-205. Revocation of permit.

Any user who violates any of the conditions of this

Article, or applicable state and federal regulations, is subject to having his permit revoked in accordance with the procedures of this article. Examples of violations are as follows, but the following is not an inclusive list:

- (1) Failure of a user to factually report the wastewater constituents and characteristics of his discharge.
 - (2) Failure of the user to report significant changes in operations or wastewater constituents and characteristics.
 - (3) Refusal of reasonable access to the user's premises for any purpose set out in this article.
 - (4) Violation of conditions of the permit.
- (Code 1973, § 21-82)

Sec. 30-206. Notice of violations.

Whenever the city finds that any user has violated, is violating, is about to violate or permits or is about to permit a violation of this article, his wastewater contribution permit or any prohibition, limitation or requirement contained in this article, the city may serve upon such person a written notice stating the nature of the violation. Within 30 days of the date of the notice, a written plan for satisfactory correction thereof must be submitted to the city by the user. This procedure may be suspended by the city if a harmful contribution exists as defined in section 30-204. (Code 1973, § 21-83)

Sec. 30-207. Show cause hearing; orders and directives of city council pursuant to hearing.

(a) The city may order any user who causes or permits, or is about to cause or permit, an unauthorized discharge to enter the POTW to show cause before the city council why the proposed enforcement action should not be taken. A notice shall be served on the user, specifying the time and place of a hearing to be held by the city council regarding the violation, the reasons why the action is to be taken and the proposed enforcement action and directing the user to show cause before the city council why the proposed enforcement action should not be taken. The notice of the hearing shall be served by registered or certified mail, return receipt requested, at least ten days before the hearing by mailing the same to the user at the user's last known address.

(b) The city council may itself conduct the hearing or may designate any of its members or any officer

or employee of the city to:

- (1) Issue in the name of the city council notices of hearings, requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved at such hearings.
- (2) Take the evidence.
- (3) Transmit a report of the evidence and hearing, including transcripts, if such are deemed necessary by the city, and other evidence, together with recommendations, to the city council for action thereon.
- (c) At any hearing held pursuant to this section, testimony taken must be under oath.
- (d) After the city council has reviewed the evidence, it may issue an order to the user responsible for the discharge, or permitting the same, directing that the sewer service be discontinued, unless adequate treatment facilities, devices or other related appurtenances shall have been installed or existing treatment facilities, devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued at the sole discretion of the city council. (Code 1973, § 21-84)

Sec. 30-208. Legal action by city.

If any person discharges sewage, industrial wastes or other wastes into the city's wastewater disposal system contrary to the provisions of this article, federal or state pretreatment requirements or any order of the city, the city may commence a civil and/or criminal action for legal and/or equitable relief. (Code 1973, § 21-85)

Secs. 30-209--30-230. Reserved.

DIVISION 2.

DISCHARGE REGULATIONS

Sec. 30-231. General discharge prohibitions.

(a) No user shall contribute, or cause or permit to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with or adversely affect in any way the operation or performance of the POTW. These general prohibitions apply to all such users of a POTW,

whether or not the user is subject to national categorical pretreatment standards or any other national, state or local pretreatment standards or requirements. A user may not contribute the following substances to any POTW:

- (1) Any liquids, solids or gases which, by reason of their nature or quantity, are or may be sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the system or at any point in the system, be more than five percent or any single reading over ten percent of the lower explosive limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, zylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides and any other substances which the city, the state or the EPA has determined is a fire hazard or a hazard to the system.
- (2) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities, such as, but not limited to, grease, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastics, gas, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes.
- (3) Any wastewater having a pH less than 5.0, unless the POTW is specifically designed to accommodate such wastewater, or wastewater having any other corrosive property capable of causing damage or creating a hazard to structures, equipment and/or personnel of the POTW.
- (4) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW or exceed the limitations set forth in a categorical pretreatment standard. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to section 307(a) of the Act.
- (5) Any noxious or malodorous liquids, gases or solids which, either singly or by interaction with other wastes, are sufficient to create a public or private nuisance or hazard to life or tend to prevent entry into the sewers or any portion of the POTW for maintenance and repair.
- (6) Any substance which may cause the POTW's effluent or any other product of the POTW, such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged into the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under section 405 of the Act, any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act or the Toxic Substances Control Act or state criteria applicable to the sludge management method being used.
- (7) Any substance which will cause the POTW to violate its NPDES and/or state disposal system permit or the receiving water quality standards.
- (8) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater with a temperature at the introduction into the POTW which exceeds 160 degrees Fahrenheit.
- (9) Any pollutants, including oxygen

demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which a user knows, has reason to know or with the exercise of reasonable prudence should know will cause interference to the POTW. In no case shall a slug load have a flow rate or contain concentration or qualities of pollutants that exceed, for any time period longer than 15 minutes, more than five times the average 24-hour concentration, quantities or flow during normal operation.

- (10) Any wastewater containing any radioactive wastes or isotopes of a half-life or concentration that may exceed limits established by the superintendent in compliance with applicable state or federal regulations.

- (11) Any wastewater which causes a hazard to human, animal or plant life or creates a public or private nuisance.

(b) When the superintendent determines that a user is contributing to the POTW any of the above enumerated substances, the superintendent shall:

- (1) Advise the user of the impact of the contribution on the POTW; and
- (2) Develop effluent limitations for such user to correct the interference with the POTW.

(Code 1973, § 21-59)

Sec. 30-232. Federal categorical pretreatment standards--Applicability.

Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this article for sources in that subcategory, shall immediately supersede the limitations imposed under this article.

(Code 1973, § 21-60)

Sec. 30-233. Same--Modification.

Where the city's wastewater treatment system achieves consistent removal of pollutants limited by federal categorical pretreatment standards, the city may apply to the approval authority for modification of specific limits in the federal categorical pretreatment standards. Consistent

removal shall be defined as reduction in the amount of a pollutant or alteration of the nature of the pollutant by the wastewater treatment system to a less toxic or less harmful state in the effluent, which is achieved by the system in 95 percent of the samples taken when measured according to the procedures set forth in section 403.7(c)(2) of title 40 of the Code of Federal Regulations, part 403, General Pretreatment Regulations for Existing and New Sources of Pollution, promulgated pursuant to the Act. The city may then modify pollutant discharge limits in the federal categorical pretreatment standards if the requirements contained in 40 CFR part 403, section 403.7 are fulfilled and prior approval from the approval authority is obtained. (Code 1973, § 21-61)

Sec. 30-234. Specific pollutant limitations.

No person shall discharge wastewater containing in excess of:

Pollutant	Concentration (mg/l)
Arsenic	0.10
Chromium (total)	0.50
Chromium (trivalent)	0.25
Chromium (hexavalent)	0.25
Cadmium	0.20
COD	1,200.00
Copper	0.50
Cyanide	0.34
Iron	5.0
Lead	0.10
Magnesium	50.0
Manganese	10.0
Mercury	0.1
Nickel	0.25
Phenol	75.0
Selenium	5.0
Silver	0.03
Zinc	0.75

(Code 1973, § 21-62)

Sec. 30-235. Applicability of state requirements and limitations.

State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this division.

(Code 1973, § 21-63)

Sec. 30-236. City's right of revision.

The city reserves the right to establish by ordinance more stringent limitations or requirements on discharges to the wastewater disposal system if deemed necessary to comply with the objectives presented in section 30-186. (Code 1973, § 21-64)

Sec. 30-237. Dilution of discharge, etc., as substitute for adequate treatment.

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the federal categorical pretreatment standards or in any other pollutant-specific limitation developed by the city or state, or with the terms of this division. (Code 1973, § 21-65)

Sec. 30-238. Accidental discharges.

(a) *Facilities and plans to prevent.* Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this article. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or user's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the city for review and shall be approved by the city before construction of the facility.

- (1) No user who commences contribution to the WWTP after the effective date of the ordinance from which this article is derived shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the city.
- (2) Review and approval of such plans and operating procedures shall not relieve the industrial user from meeting all of the requirements of this division. In the case of an accidental discharge, it is the responsibility of the user to immediately notify the WWTP.
- (3) The notification shall include location of discharge, type of waste, concentration and volume and corrective actions.

(b) *Written notice.* Within five days following an accidental discharge, the user shall submit to the

superintendent a detailed written report describing the cause of the discharge and the measures proposed to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the WWTP, fish kills, damage to the environment or any other damage to persons or property, nor shall such notification relieve the user of any fines, civil or criminal penalties or other liability which may be imposed by this article or other applicable law.

(c) *Notice to employees.* A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to notify upon any accidental discharge. Employers shall insure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure. Employers and all users shall be fully liable for all acts or omissions of their employees, agents, contractors or subcontractors, including their failure to provide notice as set out herein. (Code 1973, § 21-66)

Secs. 30-239--30-265. Reserved.

DIVISION 3.**FEES AND CHARGES****Sec. 30-266. Purpose; schedule generally.**

It is the purpose of this division to provide for the recovery of costs from users of the city's wastewater disposal system for the implementation of the program established in this article. The applicable charges or fees shall be set forth in the city's schedule of charges and fees. (Code 1973, § 21-67)

Sec. 30-267. Types of fees authorized.

- (a) The city may adopt charges and fees which may include:
- (1) Fees for reimbursement of costs of setting up and operating the city's pretreatment program;
 - (2) Fees for monitoring, inspections and surveillance procedures;
 - (3) Fees for reviewing accidental discharge procedures and construction;

- (4) Fees for permit applications;
- (5) Fees for filing appeals;
- (6) Fees for consistent removal by the city of pollutants otherwise subject to federal categorical pretreatment standards; and
- (7) Other fees as the city may deem necessary to carry out the requirements contained in any portion of this article, including all court costs, engineering fees and attorney's fees for the enforcement of this article.

(b) These fees relate solely to the matters covered by this article and are separate from all other fees charged by the city.
(Code 1973, § 21-68)

Secs. 30-268--30-300. Reserved.

ARTICLE VI. SEWER USE

DIVISION 1. GENERALLY

Sec. 30-301. Definitions.

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

Act or the Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

Approval authority means the director of the division of environmental management of the state department of environment, health and natural resources or his designee.

Authorized representative of the industrial user.

- (1) If the industrial user is a corporation, authorized representative means:
 - a. The president, secretary or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

- b. The manager of one or more manufacturing, production or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding 25 million dollars (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- (2) If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.

- (3) If the industrial user is a federal, state or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

The individuals described in subsections (1) through (3) of this definition may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 degrees centigrade, usually expressed as a concentration e.g., mg/l.

Building sewer means a sewer conveying wastewater from the premises of a user to the POTW.

Bypass means the intentional diversion of wastestreams from any portion of a user's treatment facility.

Categorical standards means national categorical pretreatment standards or pretreatment standard.

Environmental Protection Agency or EPA means the U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for

the administrator or other duly authorized official of such agency.

Grab sample means a sample which is taken from a wastestream on a one-time basis without regard to the flow in the wastestream and over a period of time not to exceed 15 minutes.

Holding tank waste means any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

Indirect discharge or *discharge* means the discharge or the introduction from any nondomestic source regulated under section 307(b), (c) or (d) of the Act (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).

Industrial user or *user* means any person who is a source of indirect discharge.

Interference means the inhibition or disruption of the POTW treatment processes, operations or its sludge process, use or disposal, which causes or contributes to a violation of any requirement of the POTW's NPDES or nondischarge permit or prevents sewage sludge use or disposal in compliance with specified applicable state and federal statutes, regulations or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act (33 U.S.C. 1345), or any criteria, guidelines or regulations developed pursuant to the Solid Waste Disposal Act (SWDA) (42 U.S.C. 6901 et. seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to title IV of (SWDA)), applicable to the method of disposal or use employed by the POTW.

Medical waste means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

National categorical pretreatment standard or *categorical standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. 1317), which applies to a specific category of industrial users, and which appears in 40 CFR chapter 1, subchapter N, parts 405--471.

National pollution discharge elimination system or *NPDES permit* means a permit issued pursuant to section 402 of the act, 33 U.S.C. 1342, or pursuant to G.S. 143-215.1 by the state under delegation from the EPA.

National prohibitive discharge standard or *prohibitive discharge standard* means absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 30-361 and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.

New source.

(1) The term "new source" means:

a. Any building, structure, facility or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under section 307(c) of the Act, which will be applicable to such source if such standards are thereafter promulgated in accordance with section 307(c), provided that:

1. The building, structure, facility or installation is constructed at a site at which no other source is located; or
2. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
3. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these

are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this definition.

Noncontact cooling water means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product.

Nondischarge permit means a disposal system permit issued by the state pursuant to G.S. 143-215.1.

Pass through means a discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the POTW's NPDES or nondischarge permit or a downstream water quality standard.

Person means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state and local government entities.

pH means a measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

Pollutant means any "waste" as defined in G.S. 143-213(18), and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste and certain characteristics of wastewater, e.g., pH, temperature, TSS, turbidity color, BOD, COD, toxicity or odor.

POTW superintendent means the city's wastewater treatment plant operator in responsible charge (ORC).

POTW treatment plant means that portion of the POTW designed to provide treatment to wastewater.

Pretreatment or treatment means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater

- b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of subsection (1)a1 or 2 of this definition but otherwise alters, replaces or adds to existing process or production equipment.

(2) For purposes of this definition, construction of a new source has commenced if the owner or operator has:

- a. Begun, or caused to begin as part of a continuous on-site construction program:
1. Any placement, assembly or installation of facilities or equipment; or
 2. Significant site preparation work, including clearing, excavation or removal of existing buildings, structures or facilities, which is necessary for the placement, assembly or installation of new source facilities or equipment.
- b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without

prior to or in lieu of discharging or otherwise introducing such pollution into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or by other means, except by diluting the concentration of the pollutants, unless allowed by an applicable pretreatment standard.

Pretreatment program means the program for the control of pollutants introduced into the POTW from nondomestic sources, which was developed by the city in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

Pretreatment requirements means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

Pretreatment standards means prohibited discharge standards, categorical standards and local limits.

Publicly owned treatment works (POTW) or municipal wastewater system means a treatment works as defined by section 212 of the Act (33 U.S.C. 1292), which is owned in this instance by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this article, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, or in any other way, users of the city's POTW.

Severe property damage means substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Significant industrial user means any industrial user of the wastewater disposal system who:

- (1) Has an average daily process wastewater flow of 25,000 gallons or more;
- (2) Contributes more than five percent of any design or treatment capacity, i.e., allowable pollutant load, of the wastewater treatment plant receiving the indirect discharge;

- (3) Is required to meet a national categorical pretreatment standard;
- (4) Is found by the city, the division of environmental management or the U.S. Environmental Protection Agency (EPA) to have the potential for impact, either singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality or compliance with any pretreatment standards or requirements; or
- (5) Meets any requirements of 15A NCAC 2H.0903, as amended.

Significant noncompliance or reportable noncompliance means a status of noncompliance defined as follows:

- (1) Violations of wastewater discharge limits.
 - a. *Chronic violations*. Sixty-six percent or more of the measurements exceed, by any magnitude, the same daily maximum limit or the same average limit in a six-month period.
 - b. *Technical review criteria (TRC) violations*. Thirty-three percent or more of the measurements are more than the TRC times the limit, maximum or average, in a six-month period. There are two groups of TRCs:
 1. For conventional pollutants, such as BOD, TSS, fats, oil and grease, TRC equals 1.4.
 2. For all other pollutants, TRC equals 1.2.
 - c. Any other violations of an effluent limit (average or daily maximum) that the control authority believes has caused, alone or in combination with other discharges, interference or pass-through; or endangered the health of the sewage treatment plant personnel or the public.

d. Any discharge of a pollutant that has caused imminent endangerment to human health or welfare or to the environment and has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.

- (2) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction and attaining final compliance by 90 days or more after the schedule date.
- (3) Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports and periodic compliance reports within 30 days from the due date.
- (4) Failure to accurately report noncompliance.
- (5) Any other violation or group of violations that the control authority considers to be significant.

Slug load means any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in section 30-361.

Standard industrial classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.

Stormwater means any flow occurring during or following any form of natural precipitation and resulting therefrom.

Superintendent means the person designated by the city to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this article, or his duly authorized representative.

Suspended solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with

categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

Wastewater means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water and stormwater that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW.

Wastewater permit means a permit as set forth in division 5 of this article.

Waters of the state means all streams, lakes, ponds, marshes, watercourse, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

(Ord. of 11-8-93, § 1.2(a))

Cross References: Definitions generally, § 1-2.

Sec. 30-302. Abbreviations.

The following abbreviations, when used in this article, shall have the designated meanings:

BOD	biochemical oxygen demand
CFR	Code of Federal Regulations
COD	chemical oxygen demand
EPA	Environmental Protection Agency
gpd	gallons per day
l	Liter
mg	Milligrams
mg/l	milligrams per liter
NPDES	national pollution discharge elimination system
O&M	operation and maintenance
POTW	publicly-owned treatment works
RCRA	Resource Conservation and Recovery Act
SIC	standard industrial classification
SWDA	Solid Waste Disposal Act
TSS	total suspended solids
TKN	total Kjeldahl nitrogen
U.S.C.	United States Code

(Ord. of 11-8-93, § 1.2(b))

Sec. 30-303. Purpose, objectives and application of article.

(a) This article sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the city and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 U.S.C. 1251 et seq.), and the General Pretreatment Regulations (40 CFR part 403).

(b) The objectives of this article are to:

- (1) Prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (2) Prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the state or otherwise be incompatible with the system;
- (3) Promote reuse and recycling of industrial wastewater and sludges from the municipal system;
- (4) Protect both municipal personnel who may be affected by sewage, sludge and effluent in the course of their employment as well as protecting the general public;
- (5) Provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
- (6) Ensure that the city complies with its NPDES or nondischarge permit conditions, sludge use and disposal requirements and any other federal or state laws to which the municipal wastewater system is subject.

(c) This article provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain nondomestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established in this article.

(d) This article shall apply to all users of the municipal wastewater system, as authorized by G.S. 160A-312 and/or 153A-275. Except as otherwise provided in this article, the superintendent of the city POTW shall administer, implement and enforce the provisions of this article. Any powers granted to or imposed upon the POTW superintendent may be delegated by the POTW superintendent to other city personnel. By discharging wastewater into the municipal wastewater system, industrial users located outside the city limits agree to comply with the terms and conditions established in this article, as well as any permits, enforcement actions or orders issued pursuant to this article.

(Ord. of 11-8-93, § 1.1)

Sec. 30-304. Confidential information.

(a) Information and data on a user obtained from reports, questionnaires, permit applications, permits, monitoring programs and from inspections shall be available to the public or other governmental agencies without restriction, unless the user specifically requests and is able to demonstrate to the satisfaction of the POTW superintendent that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data.

(b) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this article, the national pollution discharge elimination system (NPDES) permit, nondischarge permit and for the pretreatment program; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

(c) All records relating to compliance with pretreatment standards shall be made available to officials of the approval authority and EPA upon request.
(Ord. of 11-8-93, § 7)

Sec. 30-305. Annual publication of significant noncompliance.

At least annually, the POTW superintendent shall

publish, in the largest daily newspaper circulated in the service area, a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance, in 15A NCAC 2H.0903(b)(10), with applicable pretreatment standards and requirements during the previous 12 months.
(Ord. of 11-8-93, § 9)

Secs. 30-306--30-330. Reserved.

DIVISION 2.

ADMINISTRATION AND ENFORCEMENT

Sec. 30-331. Administrative remedies.

(a) *Notification of violation.* Whenever the POTW superintendent finds that any industrial user has violated or is violating this article, wastewater permit or any prohibition, limitation or requirements contained therein or any other pretreatment requirement, the POTW superintendent may serve upon such person a written notice stating the nature of the violation. Within 30 days of the date of the notice, a written explanation for the violation and a plan for the satisfactory correction thereof must be submitted to the city by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(b) *Consent orders.* The POTW superintendent is hereby empowered to enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to subsection (d) of this section.

(c) *Show cause hearing.*

- (1) The POTW superintendent may order any industrial user who causes or is responsible for an unauthorized discharge, has violated this article or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. If the POTW superintendent determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action,

the reasons for such action and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail, return receipt requested, at least ten days before the hearing. Service may be made on any agent or officer of a corporation.

- (2) The POTW superintendent shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

- (3) A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under section 30-332, nor is any action or inaction taken by the POTW superintendent under this section subject to an administrative appeal under section 30-434.

(d) *Administrative orders.* When the POTW superintendent finds that an industrial user has violated or continues to violate this article, permits or orders issued hereunder or any other pretreatment requirement, the POTW superintendent may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

- (1) Immediately comply with all requirements.
- (2) Comply in accordance with a compliance time schedule set forth in the order.
- (3) Take appropriate remedial or preventive action in the event of a continuing or threatened violation.
- (4) Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

Appeals of administrative orders shall be as provided for in section 30-434.

(e) *Emergency suspensions.*

- (1) The POTW superintendent may suspend the wastewater treatment service and/or wastewater permit when such suspension is

necessary in order to stop an actual or threatened discharge which presents, or may present, an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW or causes the POTW to violate any condition of its NPDES or nondischarge permit.

- (2) Any user notified of a suspension of wastewater treatment service and/or wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the POTW superintendent may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The POTW superintendent shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the POTW superintendent prior to the date of the hearing described in this subsection.

(f) *Termination of permit.* Any user who violates the following conditions of this article or applicable state and federal regulations is subject to having his permit terminated:

- (1) Failure to accurately report the wastewater constituents and characteristics of his discharge;
- (2) Failure to report significant changes in operations, or wastewater constituents and characteristics;
- (3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or
- (4) Violation of conditions of the permit.

Noncompliant industrial users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under this section why the proposed action should not be taken.

(Ord. of 11-8-93, § 8.1)

Sec. 30-332. Civil penalties.

(a) Any user who is found to have failed to comply with any provision of this article, or the orders, rules, regulations and permits issued hereunder, may be fined up to \$10,000.00 per day per violation.

(b) In determining the amount of the civil penalty, the POTW superintendent shall consider the following:

- (1) The degree and extent of the harm to the natural resources, to the public health or to public or private property resulting from the violation.
- (2) The duration and gravity of the violation.
- (3) The effect on groundwater or surface water quantity or quality or on air quality.
- (4) The cost of rectifying the damage.
- (5) The amount of money saved by noncompliance.
- (6) Whether the violation was committed willfully or intentionally.
- (7) The prior record of the violator in complying or failing to comply with the pretreatment program.
- (8) The costs of enforcement to the city.

(c) Appeals of civil penalties assessed in accordance with this section shall be as provided in section 30-434.

(Ord. of 11-8-93, § 8.2)

Sec. 30-333. Other available remedies.

Remedies, in addition to those previously mentioned in this article, are available to the POTW superintendent who may use any single one or combination against a noncompliant user. Additional available remedies

include, but are not limited to:

- (1) *Criminal violations.* The district attorney for the county judicial district may, at the request of the city, prosecute noncompliant users who violate the provisions of G.S. 143-215.6.B.
- (2) *Injunctive relief.* Whenever a user is in violation of the provisions of this article or an order or permit issued pursuant to this article, the POTW superintendent, through the city attorney, may petition the superior court of justice for the issuance of a restraining order or a preliminary and permanent injunction, which restrains or compels the activities in question.
- (3) *Water supply severance.* Whenever an industrial user is in violation of the provisions of this article or an order or permit issued pursuant to this article, water service to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.
- (4) *Public nuisances.* Any violation of the prohibitions or effluent limitations of this article or of a permit or order issued pursuant to this article is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW superintendent. Any person creating a public nuisance shall be subject to the provisions of sections 30-130 through 30-133 governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying such nuisance.

(Ord. of 11-8-93, § 8.3)

Sec. 30-334. Remedies nonexclusive.

The remedies provided for in this article are not exclusive. The POTW superintendent may take all or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the POTW superintendent may take other action against any user when circumstances warrant. Further, the POTW superintendent is empowered to take more than one

enforcement action against any noncompliant user.
(Ord. of 11-8-93, § 8.4)

Sec. 30-335. Affirmative defenses to discharge violations.

- (a) *Upset.*
 - (1) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (a)(2) of this section are met.
 - (2) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence, that:
 - a. An upset occurred and the user can identify the causes of the upset;
 - b. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
 - c. The user has submitted the following information to the POTW superintendent within 24 hours of becoming aware of the upset. This description may be given orally, followed by a written report within five days:
 1. A description of the indirect discharge and cause of noncompliance;
 2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 3. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the

noncompliance.

- (3) In any enforcement proceedings, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- (4) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- (5) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.
- (b) *Prohibited discharge standards defense.* A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in subsection 30-361(a) or the specific prohibitions in subsections 30-361(b)(2), (5) through (7) and (9) through (23) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass-through or interference and that either:
 - (1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during the pass-through or interference; or
 - (2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.
- (c) *Bypass.*
 - (1) A user may allow any bypass to occur

which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (c)(2) and (3) of this section.

(2) Notice of bypass.

- a. If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW superintendent, at least ten days before the date of the bypass, if possible.
- b. A user shall submit oral notice to the POTW superintendent of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the bypass. The POTW superintendent may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(3) Bypass is prohibited, and the POTW superintendent may take an enforcement action against a user for a bypass, unless:

- a. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
- b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities,

retention of untreated wastes or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

- c. The user submitted notices as required under subsection (c)(2) of this section.

- (4) The POTW superintendent may approve an anticipated bypass, after considering its adverse effects, if the POTW superintendent determines that it will meet the three conditions listed in subsection (c)(3) of this section.

(Ord. of 11-8-93, § 10)

Secs. 30-336--30-360. Reserved.

DIVISION 3.

GENERAL SEWER USE

Sec. 30-361. Prohibited discharge standards.

(a) *General prohibitions.* No user shall contribute, or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass-through. These general prohibitions apply to all users of a POTW, whether or not the user is a significant industrial user or subject to any national, state or local pretreatment standards or requirements.

(b) *Specific prohibitions.* No user shall contribute or cause to be contributed into the POTW the following pollutants, substances or wastewater:

- (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21.
- (2) Solid or viscous substances in amounts

which will cause obstruction of the flow in the POTW resulting in interference, but in no case solids greater than one-half inch in any dimension.

- (3) Petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin, in amounts that will cause interference or pass-through.
- (4) Any wastewater having a pH less than 5.0 or more than 11.0, or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.
- (5) Any wastewater-containing pollutants, including oxygen-demanding pollutants (BOD, etc.), in insufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to cause interference with the POTW.
- (6) Any wastewater having a temperature greater than 150 degrees Fahrenheit (66 degrees Celsius), or which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius).
- (7) Any pollutants which result in the presence of toxic gases, vapor or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (8) Any trucked or hauled pollutants, except at discharge points designated by the POTW superintendent in accordance with section 30-369.
- (9) Any noxious or malodorous liquids, gases or solids which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
- (10) Any substance which may cause the POTW effluent or any other product of the POTW, such as residues, sludges or scums,

to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or state criteria applicable to the sludge management method being used.

- (11) Any wastewater which imparts color which cannot be removed by the treatment process, including but not limited to dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
- (12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the superintendent in compliance with applicable state or federal regulations.
- (13) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW superintendent.
- (14) Fats, oils or greases of animal or vegetable origin in concentrations greater than 75 mg/l.
- (15) Any sludges, screenings or other residues from the pretreatment of industrial wastes.
- (16) Any medical wastes, except as specifically authorized by the POTW superintendent in a wastewater discharge permit.
- (17) Any material containing ammonia, ammonia salts or other chelating agents which will produce metallic complexes that

interfere with the municipal wastewater system.

- (18) Any material that would be identified as hazardous waste according to 40 CFR part 261 If not disposed of in a sewer, except as may be specifically authorized by the POTW superintendent.
- (19) Any wastewater causing the treatment plant effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B.0200.
- (20) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
- (21) Recognizable portions of the human or animal anatomy.
- (22) Any wastes containing detergents, surface active agents or other substances which may cause excessive foaming in the municipal wastewater system.
- (23) At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the system or at any point in the system, be more than five percent, nor any single reading over ten percent of the lower explosive limit (LEL) of the meter.

(c) *Process and storage.* Pollutants, substances, wastewater or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.

(d) *Duty of superintendent.* When the superintendent determines that a user is contributing to the POTW any of the substances enumerated in subsection (b) of this section in such amounts which may cause or contribute to interference of POTW operation or pass-through, the superintendent shall advise the user of the potential impact of the contribution on the POTW in accordance with section 30-331 and take appropriate actions in accordance with division 5 of this article for such user to protect the POTW from interference or pass-through.

Ord. of 11-8-93, § 2.1)

Sec. 30-362. National categorical pretreatment standards.

Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR chapter 1, subchapter N, parts 405--471, and incorporated herein.

- (1) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the POTW superintendent may impose equivalent concentrations or mass limits in accordance with 40 CFR 403.6(c).
- (2) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the POTW superintendent shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- (3) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by the EPA when developing the categorical pretreatment standard.
- (4) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

(Ord. of 11-8-93, § 2.2)

Sec. 30-363. Local limits.

To implement the general and specific discharge prohibitions listed in this article, industrial user-specific local limits will be developed ensuring that the POTW maximum allowable headworks loading is not exceeded for particular pollutants of concern for each industrial user. Where specific local limits are not contained for a given parameter or pollutant in an industrial user permit, the following limits will apply to all users:

Pollutant	Concentration (mg/l)
BOD	320
TSS	250
NH	40
Arsenic	0.003
Chromium (total)	0.05
Cadmium	0.003
Copper	0.02
Cyanide	0.005
Lead	0.049
Mercury	0.0003
Nickel	0.021
Phenol	75.0
Silver	0.005
Zinc	0.252

(Ord. of 11-8-93, § 2.3)

Sec. 30-364. State requirements.

State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this article. (Ord. of 11-8-93, § 2.4)

Sec. 30-365. Right of revision.

The city reserves the right to establish limitations or requirements which are more stringent than those required by either state or federal regulation if deemed necessary to comply with the objectives presented in section 30-303 or the general and specific prohibitions in section 30-361, as is allowed by 40 CFR 403.4. (Ord. of 11-8-93, § 2.5)

Sec. 30-366. Dilution.

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the city or state. (Ord. of 11-8-93, § 2.6)

Sec. 30-367. Pretreatment of wastewater.

(a) *Pretreatment facilities.* Users shall provide wastewater treatment as necessary to comply with this article, and wastewater permits issued under division 5 of this article, and shall achieve compliance with all national

categorical pretreatment standards, local limits and the prohibitions set out in section 30-361 within the time limitations as specified by EPA, the state or the POTW superintendent, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operation procedures shall be submitted to the city for review, and shall be approved by the POTW superintendent before construction of the facility. The review of such plans and operation procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the POTW superintendent prior to the user's initiation of the change.

(b) *Additional pretreatment measures.*

- (1) Whenever deemed necessary, the POTW superintendent may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this article.
- (2) The POTW superintendent may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
- (3) Grease, oil and sand interceptors shall be provided when, in the opinion of the POTW superintendent, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the POTW superintendent and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned and repaired regularly,

as needed, by the user at their expense.

- (4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(Ord. of 11-8-93, § 2.7)

Sec. 30-368. Accidental discharge/slug control plans.

At least once every two years, the POTW superintendent shall evaluate whether each significant industrial user needs an accidental discharge/slug control plan. The POTW superintendent may require any user to develop, submit for approval and implement such a plan. Alternatively, the POTW superintendent may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including nonroutine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the POTW superintendent of any accidental or slug discharge, as required by section 30-476; and
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents and/or measures and equipment for emergency response.

(Ord. of 11-8-93, § 2.8)

Sec. 30-369. Hauled wastewater.

(a) Septic tank waste may be introduced into the POTW only at locations designated by the POTW superintendent, and at such times as are established by the POTW superintendent. Such waste shall not violate the provisions of this division or any other requirements established by the city. The POTW superintendent may require septic tank waste haulers to obtain wastewater discharge permits.

(b) The POTW superintendent shall require haulers of industrial waste to obtain wastewater discharge permits. The POTW superintendent may require generators of hauled industrial waste to obtain wastewater discharge permits. The POTW superintendent also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.

(c) Industrial waste haulers may discharge loads only at locations designated by the POTW superintendent. No load may be discharged without prior consent of the POTW superintendent. The POTW superintendent may collect samples of each hauled load to ensure compliance with applicable standards. The POTW superintendent may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents and whether any wastes are RCRA hazardous wastes.
(Ord. of 11-8-93, § 2.9)

Sec. 30-370. Damage, destruction of equipment or materials.

No person or user shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any equipment or materials belonging to the city and used for the purpose of making measurements, tests or examinations and left upon the premises of a person or user discharging wastes into the sewer. This protection against damage shall also apply to any part of the public sewer system. Any person or user violating this section shall be subject to immediate arrest and prosecution.
(Ord. of 11-8-93, § 2.10)

Sec. 30-371. Erection of privies.

It shall be unlawful for any person to build, construct or otherwise erect a privy for use in connection with a house, building or other structure used for human habitation.
(Ord. of 11-8-93, § 2.11)

Sec. 30-372. Installation and connection of sewerage facilities within houses.

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the corporate limits of the city and abutting on any street, alley or right-of-way in which there is located a public sanitary sewer of the city are hereby required to install suitable water-carried sewerage facilities therein and to connect such facilities directly with the public sanitary sewer in accordance with the rules and regulations governing such system within 120 days after the date of official notice, provided that the public sanitary sewer is accessible within 200 feet of the property line.
(Ord. of 11-8-93, § 2.12)

Secs. 30-373--30-400. Reserved.

DIVISION 4.

FEES AND CHARGES

Sec. 30-401. Purpose of division.

It is the purpose of this division to provide for the recovery of costs from users of the city's wastewater disposal system for the implementation of the program established in this article. The applicable charges or fees shall be set forth in the city's schedule of charges and fees.
(Ord. of 11-8-93, § 3.1)

Sec. 30-402. User charges.

(a) A user charge shall be levied on all users including, but not limited to, persons who discharge, cause or permit the discharge of sewage into the POTW.

(b) The user charge shall reflect at least the cost of debt service, operation and maintenance, including replacement, of the POTW.

(c) Each user shall pay its proportionate cost based on volume of flow.

(d) The city manager shall review annually the sewage contributions of users, the total costs of debt service, operation and maintenance of the POTW and will make recommendations to the city council for adjustments in the schedule of charges and fees as necessary.

(e) Charges for flow to the POTW not directly attributable to the users shall be distributed among all users of the POTW based upon the volume of flow of the users.
(Ord. of 11-8-93, § 3.2)

Sec. 30-403. Surcharges.

(a) All industrial users of the POTW are subject to industrial waste surcharges on discharges which exceed the following levels:

Pollutant	Concentration (mg/l)
BOD	335
TSS	320
NH	40
Cadmium	0.03
Chromium	0.35
Copper	0.30
Cyanide	0.03
Lead	0.10
Nickel	0.10
Zinc	0.50

The amount of the surcharge will be based upon the mass emission rate, in pounds per day, discharged above the levels listed in this subsection. The amount charged per pound of excess will be set forth in the schedule of charges and fees.

(b) The volume of flow used in determining the total discharge of wastewater for payment of user charges and surcharges shall be based on the following:

- (1) Metered water consumption as shown in the records of meter readings maintained by the city; or
- (2) If required by the city or at the individual discharger's option, other flow-monitoring devices which measure the actual volume of wastewater discharged to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the city. The metering system shall be installed and maintained at the user's expense according to arrangements that may be made with the city.

Where any user procures all or part of his water supply from sources other than the city, the user shall install and maintain at his own expense a flow-measuring device of a type approved by the city.

(c) The character and concentration of the constituents of the wastewater used in determining surcharges shall be determined by samples collected and

analyzed by the city. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR part 136.

(d) The determination of the character and concentration of the constituents of the wastewater discharge by the POTW superintendent or his duly appointed representatives shall be binding as a basis for charges.

(Ord. of 11-8-93, § 3.3)

Sec. 30-404. Pretreatment program administration charges.

The schedule of charges and fees adopted by the city may include charges and fees for:

- (1) Reimbursement of costs of setting up and operating the pretreatment program.
- (2) Monitoring, inspections and surveillance procedures.
- (3) Reviewing slug control plans including accidental and/or slug load discharge procedures and construction plans and specifications.
- (4) Permitting.
- (5) Other fees as the city may deem necessary to carry out the requirements of the pretreatment program.

(Ord. of 11-8-93, § 3.4)

Secs. 30-405--30-430. Reserved.

DIVISION 5.**WASTEWATER DISCHARGE PERMIT****Sec. 30-431. Permission to discharge required.**

It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the city. When requested by the POTW superintendent, a user must submit information on the nature and characteristics of its wastewater within 30 days of the request. The POTW superintendent is authorized to prepare a form for this purpose and may periodically require users to update this information.

Ord. of 11-8-93, § 4.1)

Sec. 30-432. Permit application process.

(a) *Who is required to obtain.* All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the POTW superintendent to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the POTW superintendent's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the POTW superintendent be required to obtain a wastewater discharge permit for nonsignificant industrial users.

(b) *Significant industrial user determination.* All persons proposing to discharge nondomestic wastewater or proposing to change the volume or characteristics of an existing discharge of nondomestic wastewater shall request from the POTW superintendent a significant industrial user determination. If the POTW superintendent determines or suspects that the proposed discharge fits the significant industrial user criteria, he will require that a significant industrial user permit application be filed.

(c) *Significant industrial user permit application.* Users required to obtain a significant industrial user permit shall complete and file with the city an application in a form prescribed by the POTW superintendent, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the POTW superintendent's determination in subsection (b) of this section. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

- (1) Name, address and location, if different from the address.
- (2) Standard industrial classification (SIC) codes for pretreatment, the industry as a whole and any processes for which categorical pretreatment standards have been promulgated.
- (3) Analytical data on wastewater constituents and characteristics, including but not limited to those mentioned in division 3 of this article, any of the priority pollutants (section 307(a) of the Act) which the

applicant knows or suspects are present in the discharge as determined by a reliable analytical laboratory and any other pollutant of concern to the POTW. Sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and contained in 40 CFR, part 136, as amended.

- (4) Time and duration of the indirect discharge.
- (5) Average daily and 30 minute peak wastewater flow rates, including daily, monthly and seasonal variations, if any.
- (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow and appurtenances by the size, location and elevation.
- (7) Description of activities, facilities and plant processes on the premises, including all materials which are or could be accidentally or intentionally discharged.
- (8) Where known, the nature and concentration of any pollutants in the discharge which are limited by any city, state or federal pretreatment standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards.
- (9) If additional pretreatment and/or (O&M) will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
 - a. The schedule shall contain progress increments in the form of

dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine months.

- b. No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW superintendent including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between such progress reports to the POTW superintendent.

- (10) Each product produced by type, amount, process or processes and rate of production.
- (11) Type and amount of raw materials processed, average and maximum per day.
- (12) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system.
- (13) If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H.0908(a), as outlined in section 30-471.
- (14) Any other information as may be deemed by the POTW superintendent to be necessary to evaluate the permit application.

(d) *Application signatories and certification.*

All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(e) *Application review and evaluation.*

- (1) The POTW superintendent will evaluate the data furnished by the user and may require additional information.
- (2) The POTW superintendent is authorized to accept applications for the city and shall refer all applications to the POTW staff for review and evaluation.
- (3) Within 30 days of receipt, the POTW superintendent shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(f) *Tentative determination and draft permit.*

- (1) The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.
- (2) If the staff's tentative determination in subsection (f)(1) of this section is to issue the permit, the following additional determinations shall be made in writing:

- a. Proposed discharge limitations for those pollutants proposed to be limited;
- b. A proposed schedule of

compliance, including interim dates and requirements, for meeting the proposed limitation; and

- c. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

- (3) The staff shall organize the determinations made pursuant to subsections (f)(1) and (2) of this section and the city's general permit conditions into a significant industrial user permit.

(g) *Permit synopsis.* A fact sheet providing a brief synopsis of the application shall be prepared by the POTW staff for submission to the applicant and the approval authority, and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:

- (1) A sketch and detailed description of the industrial facilities and pretreatment facilities, including the location of all points of discharge to the POTW and all established compliance monitoring points.
- (2) A quantitative description of the discharge described in the application, which includes at least the following:
 - a. The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
 - b. The actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected present; and
 - c. The basis for the pretreatment limitations, including the documentation of any calculations in applying categorical pretreatment standards.

(Ord. of 11-8-93, § 4.2(a)--(f))

Sec. 30-433. Final action on applications.

(a) The POTW superintendent shall take final action on all applications not later than 90 days following receipt of a complete application.

(b) The POTW superintendent is authorized to:

(1) Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this article and G.S. 143-215.1.

(2) Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements.

(3) Modify any permit upon not less than 60 days' notice and pursuant to section 30-436.

(4) Revoke any permit pursuant to section 30-331.

(5) Suspend a permit pursuant to section 30-331.

(6) Deny a permit application when in the opinion of the POTW superintendent such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.

(Ord. of 11-8-93, § 4.2(g))

Sec. 30-434. Hearings.

(a) *Initial adjudicatory hearings.* An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/user assessed a civil penalty under section 30-332 or one issued an administrative order under section 30-331 shall have the right to an adjudicatory hearing before a hearing officer designated by the POTW superintendent upon making written demand, identifying the specific issues to be contested, to the POTW superintendent within 30 days following receipt of the significant industrial user permit, civil penalty assessment or administrative order. Unless such written demand is made within the time specified in this subsection, the action shall be final and binding. The hearing officer shall make a final decision on the contested permit, penalty or order within 45 days of the receipt of the written demand for a hearing. The POTW superintendent shall transmit a copy of the hearing

officer's decision by registered or certified mail.

- (1) *New permits.* Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- (2) *Renewed permits.* Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

(b) *Final appeal hearings.* Any decision of a hearing officer made as a result of an adjudicatory hearing held under subsection (a) of this section may be appealed to the city council upon filing a written demand within ten days of receipt of notice of the decision. Failure to make written demand within the time specified in this subsection shall bar further appeal. The city council shall make a final decision on the appeal within 90 days of the date the appeal was filed and shall transmit a written copy of its decision by registered or certified mail.

(c) *Official record.* When a final decision is issued under subsection (b) of this section, the city council shall prepare an official record of the case that includes:

- (1) All notices, notions and other like pleadings.
- (2) A copy of all documentary evidence introduced.
- (3) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.
- (4) A copy of the final decision of the city council.

(d) *Judicial review.* Any person against whom a final order or decision of the city council is entered, pursuant to the hearing conducted under subsection (b) of this section, may seek judicial review of the order of

decision, by filing a written petition within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, with the superior court of the county, along with a copy to the city. Within 30 days the city council shall transmit to the reviewing court the original or a certified copy of the official record.
(Ord. of 11-8-93, § 4.2(h))

Sec. 30-435. Modification.

(a) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits, except as follows:

- (1) Changes in the ownership of the discharge when no other change in the permit is indicated.
- (2) A single modification of any compliance schedule not in excess of four months.
- (3) Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.

(b) Any change or new conditions in the permit shall include a reasonable time schedule for compliance.

(c) Within nine months of the promulgation of a national categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the timeframe prescribed by such standard. Where a user, subject to a national categorical pretreatment standard, has not previously submitted an application for a wastewater discharge permit as required by subsection 30-432(c), the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable national categorical pretreatment standard.

(d) A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.
(Ord. of 11-8-93, § 4.2(i))

Sec. 30-436. Conditions.

(a) The POTW superintendent shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this article

and G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:

- (1) A statement of duration, in no case more than five years;
- (2) A statement of nontransferability;
- (3) Applicable effluent limits based on categorical standards or local limits or both;
- (4) Applicable monitoring, sampling, reporting, notification and recordkeeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency and sample type based on federal, state and local law;
- (5) Notification requirements for slug loads; and
- (6) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.

(b) In addition, permits may contain, but are not limited to, the following:

- (1) Limits on average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
- (2) Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass or other measure of identified wastewater pollutants or properties.
- (3) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate or prevent the introduction of pollutants into the treatment works.
- (4) Development and implementation of spill control plans or other special conditions, including management practices, necessary to adequately prevent accidental, unanticipated or nonroutine discharges.

- (5) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
- (6) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
- (7) Requirements for installation and maintenance of inspection and sampling facilities and equipment.
- (8) Specifications for monitoring programs, which may include sampling locations, frequency of sampling, and number, types and standards for tests and reporting schedules.
- (9) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days where self-monitoring indicates a violation.
- (10) Compliance schedules for meeting pretreatment standards and requirements.
- (11) Requirements for submission of periodic self-monitoring reports or special notification reports.
- (12) Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in section 30-483, and affording the POTW superintendent, or his representatives, access thereto.
- (13) Requirements for notification and approval by the POTW superintendent of any new introduction of wastewater pollutants or of any substantial change in the volume or character of the wastewater prior to introduction into the system.
- (14) Requirements for the prior notification and approval by the POTW superintendent of any change in the manufacturing and/or pretreatment process used by the permittee.
- (15) Requirements for immediate notification of

excessive, accidental or slug discharges, or any discharge which could cause any problems to the system.

- (16) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the terms of the permit.
- (17) Other conditions as deemed appropriate by the POTW superintendent to ensure compliance with this article, and state and federal laws, rules and regulations.

(Ord. of 11-8-93, § 4.2(j))

Sec. 30-437. Duration.

Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.

(Ord. of 11-8-93, § 4.2(k))

Sec. 30-438. Transfer.

Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred, or sold to a new owner, new user or different premises or a new or changed operation.

(Ord. of 11-8-93, § 4.2(l))

Sec. 30-439. Reissuance.

A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with section 30-432 a minimum of 180 days prior to the expiration of the user's existing permit.

(Ord. of 11-8-93, § 4.2(m))

Secs. 30-440--30-470. Reserved.

DIVISION 6.

REPORTING REQUIREMENTS

Sec. 30-471. Baseline monitoring reports.

(a) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under

40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the POTW superintendent a report which contains the information listed in subsection (b) of this section. At least 90 days prior to commencement of their discharge, new sources and sources that become categorical users subsequent to the promulgation of an applicable categorical standard shall submit to the POTW superintendent a report which contains the information listed in subsection (b) of this section. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(b) Users described in subsection (a) of this section shall submit the following information:

- (1) *Identifying information.* The name and address of the facility, including the name of the operator or owner.
- (2) *Environmental permits.* A list of any environmental control permits held by or for the facility.
- (3) *Description of operations.* A brief description of the nature, average rate of production and standard industrial classifications of the operations carried out by the user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated process.
- (4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from the regulated process streams and other streams, as necessary, to allow use of the combined wastestreams formula set out in 40 CFR 403.6(e).
- (5) *Measurement of pollutants.*
 - a. The categorical pretreatment standards applicable to each regulated process.
 - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the

POTW superintendent, of regulated process. Instantaneous, daily maximum and longterm average concentrations, or mass where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 30-480.

- c. Sampling must be performed in accordance with procedures set out in section 30-481.

(6) *Certification.* A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(7) *Compliance schedule.* If additional pretreatment and/or (O&M) will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or (O&M). The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in section 30-472.

(8) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with subsection 30-432(d).

(Ord. of 11-8-93, § 5.1)

Sec. 30-472. Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by subsection 30-471(b)(7):

- (1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and

operation of additional pretreatment required for the user to meet the applicable pretreatment standards, such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction and beginning and conducting routine operation;

- (2) No increment referred to in subsection (1) of this section shall exceed nine months;

- (3) The user shall submit a progress report to the POTW superintendent no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay and, if appropriate, the steps being taken by the user to return to the established schedule; and

- (4) In no event shall more than nine months elapse between such progress reports to the POTW superintendent.

(Ord. of 11-8-93, § 5.2)

Sec. 30-473. Reports on compliance with categorical pretreatment standard deadline.

Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the POTW superintendent a report containing the information described in section 30-471(b)(4) through (6). For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's longterm production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production, or other measure of operation, this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed in accordance with section 30-432(d).

(Ord. of 11-8-93, § 5.3)

Sec. 30-474. Periodic compliance reports.

(a) All significant industrial users shall, at a frequency determined by the POTW superintendent, but in no case less than twice per year (in January and July), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with section 30-432(d).

(b) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(c) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the POTW superintendent, using the procedures prescribed in section 30-480, the results of this monitoring shall be included in the report. (Ord. of 11-8-93, § 5.4)

Sec. 30-475. Reports of changed conditions.

(a) Each user must notify the POTW superintendent of any planned significant changes to the user's operations or system which might alter the nature, quality or volume of its wastewater at least 30 days before the change.

(b) The POTW superintendent may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under section 30-432.

(c) The POTW superintendent may issue a wastewater discharge permit under division 5 of this article or modify an existing wastewater discharge permit under division 5 of this article in response to changed conditions or anticipated changed conditions.

(d) For purposes of this requirement, significant changes include, but are not limited to, flow increases or decreases of 20 percent or greater, and the discharge of any previously unreported pollutants. (Ord. of 11-8-93, § 5.5)

Sec. 30-476. Reports of potential problems.

(a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW superintendent of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(b) Within five days following such discharge, the user shall, unless waived by the POTW superintendent, submit a detailed written report describing the causes of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, natural resources or any other damage to person or property; nor shall such notification relieve the user of any fine, penalties or other liability which may be imposed pursuant to this article.

(c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in subsection (a) of this section. Employers shall ensure that all employees who may cause such a discharge to occur are advised of the emergency notification procedure. (Ord. of 11-8-93, § 5.6)

Sec. 30-477. Reports from unpermitted users.

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the POTW superintendent as the POTW superintendent may require. (Ord. of 11-8-93, § 5.7)

Sec. 30-478. Notice of violation/repeat sampling and reporting.

If sampling performed by a user indicates a violation, the user must notify the POTW superintendent within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the POTW superintendent within 30 days after becoming aware of the violation. The user is not required to resample if the POTW superintendent monitors at the user's facility at least once a

month or if the POTW superintendent samples between the user's initial sampling and when the user receives the results of this sampling.

(Ord. of 11-8-93, § 5.8)

Sec. 30-479. Notification of the discharge of hazardous waste.

(a) Any user who commences the discharge of a hazardous waste shall notify the POTW, the EPA regional waste management division director and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number and the type of discharge (continuous, batch or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during the calendar month and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification requirement in this section does not apply to pollutants already reported by the users subject to categorical pretreatment standards under the self-monitoring requirements of sections 30-471, 30-473 and 30-474.

(b) Dischargers are exempt from the requirements of subsection (a) of this section during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a onetime notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

(c) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW superintendent, the EPA regional waste management waste division director and state hazardous waste authorities of the

discharge of such substance within 90 days of the effective date of such regulations.

(d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this article, a permit issued pursuant to this article or any applicable federal or state law.

(Ord. of 11-8-93, § 5.9)

Sec. 30-480. Analytical requirements.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA. All testing shall be done by a state certified wastewater laboratory.

(Ord. of 11-8-93, § 5.10)

Sec. 30-481. Sample collection.

(a) Except as indicated in subsection (b) of this section, the user must collect wastewater samples using flow proportional composite collection techniques. If flow proportional sampling is infeasible, the POTW superintendent may authorize the use of time proportional sampling or a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.

(b) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides and volatile organic compounds must be obtained using grab collection techniques.

(Ord. of 11-8-93, § 5.11)

Sec. 30-482. Timing.

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not

mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

(Ord. of 11-8-93, § 5.12)

Sec. 30-483. Recordkeeping.

Users subject to the reporting requirements of this article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method and time of sampling and the name of the persons taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the POTW superintendent.

(Ord. of 11-8-93, § 5.13)

Secs. 30-484--30-510. Reserved.

DIVISION 7.

COMPLIANCE MONITORING

Sec. 30-511. Monitoring facilities.

(a) The city requires the user to provide and operate, at the user's own expense, monitoring facilities to allow inspection, sampling and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

(b) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling and measuring equipment shall be maintained, at all times, in a safe and proper operating condition at the expense of the user.

(c) Whether constructed on public or private

property, the sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable local construction standards and specification. Construction shall be completed within 90 days following written notification by the city.

(Ord. of 11-8-93, § 6.1)

Sec. 30-512. Inspection and sampling.

The city will inspect the facilities of any user to ascertain whether the purpose of this article is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the city, approval authority and EPA or their representative ready access at all reasonable times to all parts of their premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. The city, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling inspection, compliance monitoring and for metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the city, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the POTW superintendent's, approval authority's or EPA's access to the user's premises shall be a violation of this article.

Unreasonable delays may constitute denial of access.

(Ord. of 11-8-93, § 6.2)

Sec. 30-513. Search warrants.

If the POTW superintendent, approval authority or EPA has been refused access to a building, structure or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article or any permit or order issued pursuant to this article, or to protect the overall public health, safety and welfare of the community, then the POTW superintendent, approval authority or EPA may seek issuance of a search warrant from the court having jurisdiction of this matter within the city.

(Ord. of 11-8-93, § 6.3)



Chapter 31

Reserved

Chapter 32

VEHICLES FOR HIRE*

Article I. In General

Secs. 32-1--32-35. Reserved.

Article II. Taxicabs

Division 1. Generally

Sec. 32-36. Definitions.
Sec. 32-37. Operation generally.
Sec. 32-38. Insurance.
Sec. 32-39. Inspection of vehicles.
Sec. 32-40. Required identification markings.
Secs. 32-41--32-55. Reserved.

Division 2. Permit

Sec. 32-56. Required; factors determining issuance.
Sec. 32-57. Effect of issuance; renewal; transfer; employing or allowing person without permit to drive.
Sec. 32-58. Fee; application generally.
Sec. 32-59. Investigation of application; issuance of preliminary and temporary permits; issuance by council.

*

Cross References: Businesses, ch. 10.

State Law References: Authority of city to license and regulate vehicles for hire, G.S. 160A-304.

ARTICLE I. IN GENERAL

Secs. 32-1--32-35. Reserved.

ARTICLE II. TAXICABS

DIVISION 1. GENERALLY

Sec. 32-36. Definitions.

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

Taxicab means any vehicle seating nine or fewer passengers operated upon any street on call or on demand, accepting or soliciting passengers indiscriminately for hire.

(Code 1973, § 20-1)

Cross References: Definitions generally, § 1-2.

Sec. 32-37. Operation generally.

(a) It shall be unlawful for any person to drive or operate any taxicab within the corporate limits in violation of any provision of this Code, other ordinance or regulation of the city or state law.

(b) It shall be unlawful for any owner or operator of a taxicab to knowingly permit any driver or chauffeur who has not complied fully with this article to operate any of his taxicabs within the corporate limits.

(Code 1973, § 20-2)

Sec. 32-38. Insurance.

It shall be unlawful for any owner of a taxicab to operate such taxicab within the corporate limits without first taking out and keeping in effect at all times a policy or policies of insurance to cover damages and injury resulting from the operation of such taxicabs. Such insurance shall at all times equal or exceed the minimum requirements in effect under the insurance regulations of the state.

(Code 1973, § 20-3)

Sec. 32-39. Inspection of vehicles.

(a) It shall be unlawful for any person to operate or cause to be operated within the corporate limits any taxicab without first presenting each taxicab to be so used to the chief of police for an inspection of brakes, lights, tires, horn, motor, windshield wipers, turn signal indicators and all parts of such vehicles which in the opinion of the chief of police are in need of repair to maintain such taxicab in a safe and proper condition.

(b) It shall also be the duty of every taxicab owner to present each and every motor vehicle used as a taxicab once each six months after the first inspection for a reinspection. A reasonable fee for such inspection shall be determined by the chief of police, who shall issue an inspection card to the taxicab owner showing the make, model, name of the owner and the inspection date of any taxicab so inspected.

(Code 1973, § 20-4)

Sec. 32-40. Required identification markings.

(a) The name of the taxicab company, the telephone number and the city's name shall be painted with permanent paint on both sides of each taxicab with letters and numbers at least four inches in height. The taxicab company's name shall be painted on the rear of each taxicab in letters at least four inches in height. Colors of paint to be used for the lettering and numbering are to be in sharp contrast with the color of the surface paint to which they are applied so as to be visible at a reasonable distance.

(b) No lettering or numbering shall be acceptable which has been painted upon a sheet of metal or other material which, in turn, can be removed or detached from the vehicle.

Secs. 32-41--32-55. Reserved.

DIVISION 2. PERMIT

Sec. 32-56. Required; factors determining issuance.

It shall be unlawful for any person to operate a taxicab within the corporate limits without first securing a taxicab permit. Such permit shall only be issued by the city council if such issuance is in the public interest, convenience or necessity, which shall be determined upon the following factors, among other things taken into consideration:

- (1) The applicant's financial responsibility.
- (2) The likelihood of the proposed service being permanent in nature and character.
- (3) The number and condition of the applicant's taxicabs and any and all of the applicant's taxicab facilities.
- (4) The number of taxicabs now operated and the demand for increased service.
- (5) Whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved.
- (6) The applicant's experience in the taxicab business.
- (7) The current population of the city and its projected growth.
- (8) Any other factors relevant to a particular application and the taxicab situation as it exists as of the time of the application.

(Code 1973, § 20-7)

Sec. 32-57. Effect of issuance; renewal; transfer; employing or allowing person without permit to drive.

(a) A taxicab permit, when issued shall constitute a franchise to operate taxicabs within the corporate limits for a period of one year from the date of the permit's issuance. Applications for renewal must be filed annually, and such permits are not transferable.

(b) It shall be unlawful for any taxicab owner to employ any driver who has not been issued a taxicab permit or to allow anyone without such permit to operate his taxicabs.

(Code 1973, § 20-8)

Sec. 32-58. Fee; application generally.

(a) Any applicant shall pay the currently required fee for a taxicab permit and cash renewal thereof.

(b) All applications for taxicab permits shall be made upon blanks furnished by the city and shall, among other things, state the name, address, physical description, former employers, court records and state chauffeur's license number of the applicant. Such application shall be sworn to and signed by the applicant.

(Code 1973, § 20-9)

Sec. 32-59. Investigation of application; issuance of preliminary and temporary permits; issuance by council.

(a) The chief of police is charged with the duty of investigating the facts stated in the application for a permit under this division, and he shall report his findings to the city council.

(b) The chief of police shall have the authority to issue a preliminary and temporary permit authorizing the applicant to operate a taxicab within the corporate limits until the city council has acted on such application.

(c) If the city council finds that the applicant has not been convicted of a felony, any

violations of state and federal statutes relating to intoxicating liquor, prostitution, controlled substances or narcotics, and is not a repeated violator of the motor vehicle laws of this state or any other state, the city council may issue a taxicab permit. If after such permit is issued, the applicant violates any provisions of this section, his permit shall be immediately rescinded.

(Code 1973, § 20-10)

CODE COMPARATIVE TABLE

1973 CODE

This table gives the location within this Code of those sections of the 1973 Code, as updated through May 14, 1990, which are included herein. Sections of the 1973 Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances adopted subsequent thereto, see the table immediately following this table.

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ORDINANCES

This table gives the location within this Code of those ordinances adopted since the 1973 Code, as updated through May 14, 1990, which are included herein. Ordinances adopted prior to such date were incorporated into the 1973 Code, as supplemented. Ordinances adopted since the 1973 Code, and not listed herein, have been omitted as repealed, superseded or not of a general and permanent nature.

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*Note—The adoption, amendment, repeal, omissions, effective date, explanation of numbering system and other matters pertaining to the use, construction and interpretation of this Code are contained in the adopting ordinance and preface which are to be found in the preliminary pages of this volume.

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**CITY OF CHERRYVILLE ZONING ORDINANCE
JANUARY 14, 2002**

CHERRYVILLE CITY COUNCIL

Wade H. Stroupe, Jr., Mayor
Wes Golden, Mayor Protem
Jerry Hudson
Frank Osborne
Nell Parker

CHERRYVILLE PLANNING AND ZONING BOARD

Sam Beam, Chairman
Arthur Young, Vice Chairman
Brad Boyles
Pam Harris
Jack Whitworth
Allen Fraley
Bud Black

Ben Blackburn, Jr., City Manager
Kelly Sellers, Planning Director

Technical Assistance Provided by Centralina Council of Governments, Charlotte, NC

ZONING ORDINANCE
CITY OF CHERRYVILLE
CHERRYVILLE, NORTH CAROLINA

An Ordinance regulating the uses of buildings, structures, and land for trade, industry, commerce, residence, recreation, public activities or other purposes; the size of yards, courts, and other open spaces; the location, height, bulk, number of stories and size of buildings and other structures; the density and distribution of population; creating districts for said purposes and establishing the boundaries thereof; defining certain terms used herein providing the method of administration, amendment and enforcement; providing penalties for violations; providing for a Board of Adjustment and defining the duties and powers of said board; replacing conflicting ordinances; and for other purposes.

PART 1

AUTHORITY AND ENACTMENT CLAUSE

Pursuant to authority conferred by Article 19, Chapter 160A, North Carolina General Statutes, as amended, and for the purpose of promoting the health, safety, morals, and general welfare of the inhabitants of the City of Cherryville, the City Council of the City of Cherryville with the authority vested in them by the citizens hereby ordains and enacts into law the following Article Parts and Sections.

PART 2

SHORT TITLE

The Ordinance shall be known and may be cited as The Zoning Ordinance of the City of Cherryville, North Carolina or the "Zoning Ordinance."

PART 3

JURISDICTION

Section 3.1 Jurisdiction

The provisions of this Ordinance shall apply within the corporate limits of the City of Cherryville and within the territory beyond such corporate limits as now or hereafter

fixed, said territory being more particularly described on the City's Official Zoning Map as certified by the City Clerk. The boundary lines shown on said map shall be incorporated and made a part of this Ordinance as if fully set out herein.

Section 3.2 Purpose

The purpose of these regulations shall be to regulate the height, number of stories, and size of buildings and other structures; the size of yards, and other spaces, the density of population; the location and use of buildings, structures and land for trade and residence, and other purposes, so as to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote desirable living conditions and the sustained stability of neighborhoods; to discourage blight; to conserve the value of buildings and land; to facilitate the adequate and economic provision of transportation, water, sewerage, schools, parks and other public facilities and services; and to encourage the most appropriate use of land, buildings, and other structures within the area of jurisdiction of this Ordinance.

- 3.2.1** The zoning districts and maps have been made with due consideration of future growth, development, and change in land development as well as with due consideration of existing development and uses of land in the City of Cherryville and vicinity.
- 3.2.2** These regulations and districts represent reasonable consideration of the character of the districts and their peculiar suitability for particular uses of land and have been made with a view to preserving the existing environment and/or assuring the development of a future environment that realizes the greatest possible use and enjoyment of land on individual properties. This is balanced against the necessary protection of the values of buildings and land and the use and enjoyment of land on adjacent properties and with the objective of promoting and protecting the public welfare through the regulation of land use and the process of land development.

PART 4

DEFINITIONS OF TERMS USED IN THIS ORDINANCE

For the purpose of interpreting this Ordinance, certain words or terms are herein defined. Except as defined herein, all other words used in this Ordinance shall have their customary dictionary definition.

Section 4.1 Interpretation of Terms and Words

- (1) Words used in the present tense include the future tense.
- (2) Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context of the particular usage clearly indicates otherwise.
- (3) The word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual.
- (4) The word "lot" includes the word "plot" or "parcel".
- (5) The word "building" includes the word "structure".
- (6) The words "shall" and "must" are always mandatory and not merely directory.
- (7) The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to be used or occupied".
- (8) The word "Map", or "Zoning Map", or "Cherryville Zoning Map" shall mean the "Official Zoning Map of the City of Cherryville, North Carolina".
- (9) Any word denoting gender includes the female and the male.
- (10) The term "City Council" shall mean the "City Council of Cherryville, North Carolina".
- (11) The term "Planning Board" shall mean the "Planning and Zoning Board of the City of Cherryville, North Carolina".
- (12) The term "Board of Adjustment" shall mean the "Board of Adjustment of the City of Cherryville, North Carolina".
- (13) The term "Cherryville Land Development Plan" shall mean the Cherryville Land Development Plan adopted by the Cherryville City Council on __, and any amendments thereto.

- (14) The term "Zoning Administrator" shall mean the Zoning Administrator of the City of Cherryville, North Carolina.

Definitions of Specific Terms and Words

Abandonment. A use shall be deemed to be abandoned when:

- (a) The use is discontinued; or
- (b) The premises are devoted to another conforming use; or
- (c) When the characteristic equipment and furnishings of the nonconforming nonresidential use have been removed from a premises.

Accessory Use. A use customarily and clearly incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

Accessory Structure. A structure detached from the principal structure on the same lot and customarily incidental and subordinate to the principal structure.

Adult-Oriented Business. An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center (including adult massage parlor and adult health club), sexually oriented device business or any combination of the foregoing or any similar business. As used in this Ordinance, the following definitions shall apply:

Adult Arcade (also know as "peep show")

Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projects, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe "specified sexual activities" or "specified anatomical areas".

Adult Bookstore or Adult Video Store. A commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or
2. Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities".

Adult Cabaret A nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits or displays as one of its principal business purposes:

1. Persons who appear nude or semi-nude or
2. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
3. Films, motion pictures, video cassettes, slides, or other photographic reproductions which depict or describe "specified sexual activities" or specified anatomical areas".

Adult Motel. A motel, hotel or similar commercial establishment that offers accommodations to the public for any form of consideration which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe "specified sexual activities" or "specified anatomical areas" as one of its principal business purposes.

Adult Motion Picture Theater. A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regular shown which depict or describe "specified sexual activities" or specified anatomical areas".

Adult Theater. A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits or displays, as one of its principal business purposes, persons who appear in a state of nudity or semi-nude, or live performances that expose or depict "specified sexual activities" or "specified anatomical areas".

Escort. A person who, for any tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort Agency. A person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip, or other consideration.

Nude Model Studio. Any place where a person appears nude or semi-nude, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. A "Nude Model Studio" shall not include a proprietary school licensed by the State of North Carolina or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

Nude or A State of Nudity.

1. the appearance of a human anus, male genitals or female genitals; or
2. A state of dress that fails to opaquely cover a human anus, male genitals or female genitals.

Semi-nude. A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual Encounter Center. A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling (including sexually oriented massaging) between persons of the opposite sex, or similar activities between male and female persons and/or between persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

Sexually Oriented Devices. Any artificial or simulated "specified anatomical area" or other device or paraphernalia that is designed principally for "specified sexual activities" but shall not mean any contraceptive device.

Specified Anatomical Areas. Human genitals in a state of sexual arousal.

Specified Sexual Activities. Is and includes any of the following:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
3. Masturbation, actual or simulated; or
4. Excretory functions as part of or in connection with any of the activities set forth in 1-3 above.

Agriculture Uses. The commercial production, keeping or maintenance, of plants and animals useful to man, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products, poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all or such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, including nuts; vegetables; nursery, floral and ornamental products; or lands devoted to a soil conservation or forestry management program. Irrespective of the above, a home garden and the sale of produce at a home produce stand shall not be considered to be an "agricultural use."

Alley. A public or private way that affords only a secondary means of access to abutting property and not intended for general traffic circulation.

Alteration. A change in the size, configuration, or location of a structure; or a change in the use of a structure or lot from a previously approved or legally existing size, configuration, location, or use.

Amateur Radio Tower. A freestanding or building-mounted structure, including any base, tower, pole, antenna, and appurtenances, intended for amateur radio (HAM) airway communication purposes.

Animal Hospital. A place where animals are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the hospital use. All facilities associated with an animal hospital shall be located indoors.

Animal Kennel. A commercial enterprise where more than six (6) dogs or other domesticated animals are groomed, bred, boarded, trained, or sold.

Arcade or Amusement Center or Game Room. An establishment operated for profit where two (2) or more billiard tables or ten (10) or more other type amusement devices/or games of skill such as video games, pinball, or table games, are provided for public use. This definition shall be construed to include facilities for the conduct of bingo gaming as a principal use.

Atrium House. Attached or semi-attached one-story house on a small lot, said lot having a small yard space, which is surrounded by the house and its privacy walls. As distinguished from the patio house, an atrium house is always one-story, its yard space and lot size is usually smaller, and it is always attached (to another unit) in some fashion.

Auto Body Shop. Any building, premises and land in which or upon which a business is conducted that primarily involves the painting of vehicles or external repairing of damaged vehicles.

Auto Hobbyist. One who collects, repairs or alters automobiles to which he holds title for enjoyment and not for commercial purposes, as an incidental use on the premises where the person resides.

Automobile Parts Supply Store. An establishment which sells new and/or rebuilt automobile parts and accessories but does not include junk yards, used auto parts sales, or the installation of such parts.

Auto Repair Garage. Any building, premises and/or land in which or upon which a business is conducted involving the maintenance or servicing of vehicles.

Awning. A structure made of cloth, metal, or other material affixed to a building in such a manner that the structure may be raised or retracted from a building to a flat position against the building, but not a canopy.

Banner. A sign intended to be hung either with or without a frame, possessing characters, letters, illustrations, or ornamentations applied to plastic or fabric of any kind, excluding flags and emblems of political, professional, religious, educational, or corporate organizations.

Bed and Breakfast. A use that (i) takes place within a building that at any time prior to such establishment, was designed and used as a single-family residence, (ii) that consists of renting one or more dwelling rooms on a daily basis to tourists, vacationers and similar transients, (iii) where the provision of meals, if provided at all, is limited to the breakfast meal, available only to guests, and (vi) where the bed and breakfast operation is conducted primarily by persons who reside in the dwelling unit, with the assistance of not more than the equivalent of two (2) full-time employees.

Boarding House. A building where, for compensation, rooms and/or meals are provided for not less than three (3) persons and not more than twelve (12) persons, provided however, the operator or owner must reside within a separate dwelling unit within said building.

Building. Any structure temporary or permanent, having a roof or other covering supported by columns or walls and intended for the shelter, housing or enclosure of any person, animal, process, equipment, goods, materials or chattels of any kind or nature. The term "building" shall be construed as if followed by the words "or parts thereof".

Building, Accessory. A building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot therewith.

Building Height. The vertical distance from the mean elevation of the finished grade along the front of the building to the highest point of a flat roof, or to the deck line of a mansard roof, or to the mean height level between eaves and ridges for gable, hip and gambrel roofs.

Building, Principal. A building in which is conducted the principal use on the lot on which said building is situated. In a residential district any structure containing a dwelling unit shall be deemed to be the principal building on the lot where it is located.

Building Setback Line. A line establishing the minimum allowable distance between the nearest portion of any building, including porches, and the nearest edge of the street right-of-way when measured perpendicularly thereto.

Building Wall. The entire surface area, including windows and doors, of an exterior wall of a building. For the purposes of this Ordinance, the area of a wall will be calculated for a maximum of fifty (50) feet in height of a building.

Bulletin Board. A sign used to announce meetings or programs to be held on the premises of a church, school, auditorium, library, museum, community recreation center, or similar noncommercial places of public assembly.

Business Park. A development on a tract of land that contains two (2) or more separate office buildings, constructed and managed in an integrated and coordinated basis. A business park may also be cited as an office park.

Campground. Temporary or permanent buildings, tents, or other structures established or maintained as a temporary living quarter, operated continuously for a period of three (3) or more days for recreation, religious, education, vacation, or therapeutic reasons.

Canopy. A permanent structure, other than an awning, attached or unattached to a building for the purpose of providing shelter to patrons or automobiles, or as a decorative feature on a building wall. A canopy is not a completely enclosed structure.

Carnival. A traveling enterprise offering amusements.

Cemetery. Property used for the interment of the dead, which use may include the commercial sale and location of burial lots, crypts, or vaults for use exclusively on the subject property. A cemetery shall not be used for the preparation or embalming of bodies or the cremation of bodies. Setbacks for cemeteries shall be measured from the nearest structure or gravesite.

Certificate of Compliance. A document issued by the City of Cherryville allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with this Ordinance and all other applicable regulations.

Church/House of Worship. A building or structure, or group of buildings or structures, which by design and construction are primarily intended for conducting organized religious services whose site may include an accessory area for the interment of the dead. A school or day care center affiliated with a church/house of worship and located on the same premises as such shall be considered a conditional use in a residential (R) zoning district.

Circus. A large enclosed area used especially for sports and animal exhibitions.

Cluster Housing. A development pattern where the dwelling units are grouped or "clustered" on a density basis for the total land area of the development, rather than spread evenly throughout the site on a lot by lot basis. A cluster housing development includes permanent open space and greenways usually owned and maintained by a homeowners' association or the developer.

Common Open Space. Land and/or water areas within the site designated for development, not individually owned or dedicated for public use, which is designed and intended for the common use or enjoyment of the residents of the development but not including any lands occupied by streets, street rights-of-way, or off-street parking.

Common Open Space, Improved. Common open space which has been improved with recreational areas and amenities such as, but not limited to, ball fields, tennis courts, swimming pools, nature trails, clubhouses, etc.

Community Center. A building used for recreational, social, educational and cultural activities, usually owned and operated by a public or non-profit group or agency.

Conditional Use. Any use authorized by a conditional use permit.

Conditional Use Permit (CUP). A special authorization for a specific use - other than a permitted use within the zoning district - which is subject to any special restrictions or conditions on its location, size, extent or character of use as determined by the City Council in order to insure consistency with the intent and character of the zoning district in which the use is located.

Condominium. A building, or a group of buildings, in which units are owned individually and the structure, common areas and facilities are owned by all of the owners on a proportional basis.

Construction Trailer. A structure standing on wheels towed or hauled by another vehicle which is used for neither overnight nor year round occupancy and is used exclusively at a construction project on a temporary basis for office or storage purposes.

Contiguous. Next to, abutting, or touching and having a boundary, or portion thereof, which is coterminous including properties traversed or separated by a road, stream, right-of-way or similar man-made or natural configuration.

Continuing Care Communities. Also called "life care communities" and "continuing care retirement communities", these complexes include independent living units (apartments, condominiums, or cottages), assisted living (domiciliary care) facilities and/or nursing home beds. Residents may pay an entry fee which purchases a housing unit that can be used for the rest of their lives or units may be made available on a rental basis. If owned, the unit often reverts back to the development owner upon the death of the resident or surviving spouse.

Convenience Store. A one-story retail store containing less than three thousand six-hundred (3,600) square feet of gross floor area that is designed and stocked to sell primarily fuel, food (packaged and/or prepared), beverages and other household supplies to customers who purchase a relatively few items (in contrast to a "super market"). It is designed to attract and depends upon a large volume of stop-and-go traffic. If fuel is sold, the sale of fuel shall be limited to the hours of 6:00 a.m. and 12:00 midnight (See definition of Express Fuel/Mini-Mart.)

Country Club. A land area and buildings containing recreational facilities, clubhouses and usual accessory uses, open to members and their guests.

Cultural arts center. Any institution, organization, foundation, or establishment that provides services for the display, performance or enjoyment of heritage, history, or the arts. These uses may include, but are not limited to, museums, art galleries, performance art venues, and interpretive sites.

Customary Home Occupation. Any use of commercial service customarily conducted within a dwelling (except as otherwise provided) by the residents thereof, which is clearly secondary to the use of the dwelling for living purposes and does not change the character thereof or have any exterior physical, visual, audible or other sensory evidence of such secondary use; where no power other than that used in the home is used; where no signs other than one unlighted sign not in excess of two (2) square feet is displayed; where no merchandise or other articles are stored in the open or in accessory resident buildings or are displayed for advertising purposes; where no more than one (1) non-resident is employed or otherwise reports for work; and which an area equivalent of not more than twenty-five (25) percent of the principal building is used.

Day Care Center. A place where daytime care is provided to six (6) or more children unrelated by blood or marriage to, and not the legal wards or foster children of the attendant adult, within an occupied residence. Children who are related by blood or marriage to the attendant adult shall not be counted as patrons of the day care center.

Day Care Center, Accessory. A day care center facility located on the premises or adjacent to the premises of an office use, institutional use, commercial use, industrial use or group development for the primary purpose of care for the dependents of employees of such commercial, office, institutional or industrial use or of persons employed within a group development. Two (2) or more businesses may jointly operate or sponsor one accessory day care center. At least fifty (50) percent of the clients enrolled shall be dependent of employees of the establishment(s) or of businesses within the group development sponsoring such facility.

Day Care Center, Small Group. A place where daytime care is provided to not more than five children unrelated by blood or marriage to, and not the legal wards or foster children of the attendant adult, within an occupied residence. Children who are related by blood or marriage to the attendant adult shall not be counted as patrons of the small group day care center.

Density, Gross. A ratio expressed as the number of dwelling units per gross acre. The ratio is derived by dividing the total number of dwelling units by the total land area (in acres) used or proposed to be used for purposes such as buildings, roads, public facilities, and open spaces.

Duplex. Two dwelling units, including modular homes, attached along and sharing one or more common walls and located on a single lot.

Dwelling, Attached. A single-family dwelling attached to two or more single-family dwellings by common vertical walls.

Dwelling, Detached. A dwelling unit that is developed with open yards on all sides including modular homes but not including manufactured homes.

Dwelling, Multi-Family. See "Development, Multi-family".

Dwelling, Single-Family. A detached building designed for or occupied exclusively by one (1) family, but not to include manufactured homes as defined by this Ordinance.

Dwelling, Two-Family. A building arranged or designed to be occupied by two (2) families living independently of each other.

Dwelling Unit. A room or combination of rooms designed for year-round habitation, containing self-sufficient bathroom and kitchen facilities, connected to all required utilities, and designed for or used as a residence by one family.

Electronic Gaming Accessory Use Any business enterprise, as an accessory use, where persons utilize four (4) or less electronic machines, including, but not limited to computers and gaming terminals, to conduct games including but not limited to sweepstakes, lotteries, games, and/or games of chance, and where cash, merchandise, or other items of value are redeemed or

otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds, which have a finite pool of winners. The term includes, but is not limited to internet sweepstakes, video sweepstakes, or cybercafés. This definition does not include any lottery endorsed, approved or sponsored by the State of North Carolina, or arcade games of skill. This use requires a separate privilege license. Hours of operation shall be Monday thru Saturday - 10 a.m. – Midnight. Sunday 1 p.m. thru 6 p.m.

Electronic Gaming Operation Any business enterprise, as a principal use, where persons utilize five (5) or more electronic machines, including, but not limited to computers and gaming terminals, to conduct games including but not limited to sweepstakes, lotteries, games, and/or games of chance, and where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds, which have a finite pool of winners. The term includes, but is not limited to internet sweepstakes, video sweepstakes, or cybercafés. This definition does not include any lottery endorsed, approved or sponsored by the State of North Carolina, or arcade games of skill. This use requires a separate privilege license. Hours of operation shall be Monday thru Saturday - 10 a.m. – Midnight. Sunday 1 p.m. thru 6 p.m.

Essential Services. Publicly or privately owned facilities or systems for the distribution of gas, electricity, steam, or water; the collection and disposal of sewage or refuse; the transmission of communications; or similar functions necessary for the provision of public services. Essential services are divided into the following three classes:

- (a) **Class 1.** Transmission lines - whether, subterranean or overhead - including electrical, natural gas, and water distribution lines, sewer gravity lines, lift stations and pressure mains; underground septic tanks and drain fields, cable television and telephone transmission lines; or similar utility lines.
- (b) **Class 2.** Booster stations, pumping stations, switching facilities, substations, water or gas, or other similarly required facilities in connection with telephone, electric steam, water or sewer, or other utilities.
- (c) **Class 3.** Generation, production, or treatment facilities such as power plants, sewage treatment plants, radio, television and telephone transmission towers and antennae and public or private utilities operations centers.

Express Fuel/Mini Mart. A one-story retail store containing less than three thousand six-hundred (3,600) square feet of gross floor area that is designed and stocked to sell a large volume of fuel and may also sell prepared and/or packaged foods, beverages, and household and picnic supplies, and automobile incidentals. It is designed to attract and depends upon a large volume of fueling and stop-and-go traffic. Automotive mechanical and/or maintenance services are not provided. Any retail business which generally meets the forgoing description and which sells fuel between the hours of 12:00 midnight and 6:00 a.m. shall be deemed an Express Fuel/Mini-Mart.

Family. An individual, or two or more persons related by blood, marriage or adoption living together as a single housekeeping unit, exclusive of household servants; or a group of not more than six persons who need not be related by blood, marriage, or adoption living together as a

single housekeeping unit.

Family Care Home. A home with support and supervisory personnel that provides room and board, personal care and rehabilitation services in a family environment for not more than six resident handicapped persons, said handicapped persons defined in NCGS, 168-21(2).

Farmer's Market. An outdoor market at which fruits and vegetables are sold on a retail basis on a nonresidential lot.

Feed and Flour Mills. An establishment at which feed and grain are milled and stored.

Feed and Seed Store. A retail establishment at which animal feed, crop seeds and related products are sold. The milling or grinding of feed or flour at such establishments shall be prohibited, as shall the storage of milled product.

Finance Company. A commercial establishment that makes short and long term loans to individuals.

Financial Institution. A commercial bank, a mortgage bank, a savings bank, a saving and loan association, or a credit union any of which are licensed, insured or chartered by the United States of America or the State of North Carolina.

Flag. A piece of durable fabric of distinctive design attached to a permanent pole that is used as a symbol or decorative feature.

Flea Market. An open-air market for new and/or second-hand articles and goods sold by one or more merchants, which is conducted on an open non-residential lot. Occasional yard sales conducted by individuals or non profit organizations shall not be deemed flea markets, provided such yard sales are not conducted on more than six (6) days per year or in the case of non-profit organizations, not more than ten (10) days per year.

Floor Area Ratio (FAR). The gross floor area of all buildings on a lot divided by the lot area. When computing this figure, the gross floor area of all enclosed parking deck buildings shall be excluded.

Florist. A retail commercial establishment where flowers or ornamental plants are sold indoors.

Frontage. All the property abutting on one side of a street between two (2) intersecting streets measured along the street line.

Golf Course. A tract of land for playing golf, improved with tees, fairways, hazards and which may include clubhouses, shelters, and golf course maintenance facilities.

Grade. The height of the top of the curb, or if no curb exists, the height of the edge of pavement in the lane of travel adjacent to the side of the street at which grade is being measured.

Greenhouse. A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation

of delicate or out-of-season plants for subsequent sale.

Greenhouse, Commercial. An establishment whose primary business is the growing of plants through the use of one or more on-premises greenhouses.

Gross Floor Area. The sum of the gross horizontal areas of each floor of the principal building, measured from the exterior walls or from the centerline of the party walls, including the floor area of accessory structures. The term does not include any area used exclusively for the parking of motor vehicles or for building or equipment access such as stairs, elevator shafts and maintenance crawlspaces or unused attics. This term also excludes pedestrian walkway common areas within enclosed shopping areas.

Group Development. A group of two (2) or more principal structures built on a single lot, tract or parcel of land not subdivided into the customary streets and lots and which will not be so subdivided, and designed for occupancy by separate families, businesses, or other enterprises. Examples would be: cluster-type subdivisions, row houses, apartment complexes, housing projects, school and hospital campuses and shopping centers.

Hotel. A facility offering transient lodging accommodations to the general public and may provide additional services such as restaurants, meeting rooms and recreation facilities.

Impervious Surface. Any material which reduces and prevents absorption of storm water into previously undeveloped land.

Impervious Surface Ratio. The gross area of all impervious surfaces on a lot divided by the lot area.

Junk Yard. The use of more than six-hundred (600) square feet of the area of any lot for the storage, keeping, or abandonment of junk, including scrap metals or other scrap materials, or for the dismantling, demolition or abandonment of automobiles or other vehicles or machinery furnishing any or parts thereof.

Large Tree. A tree which, at the time of planting, has a caliper of at least one and three-fourths (1-3/4) inches and a height of at least ten (10) feet and of a species which, at maturity, can be expected to reach a height of at least forty (40) feet under normal growing conditions in the local climate.

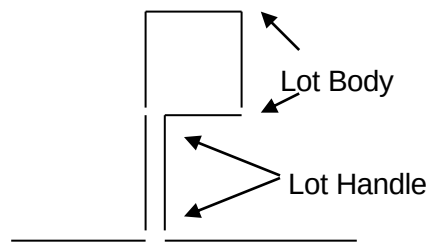
Livestock. All cattle or animals of the bovine species; all horses, mules, burros, and animals of the equine species; all goats or animals of the caprine species; all swine or animals of the porcine species; and, all sheep or animals of the ovine species.

Loading Space, Off-Street. An off-street space or berth on the same lot with a building or contiguous to a group of buildings for the temporary parking of commercial vehicles while loading or unloading merchandise or materials.

Lot. A parcel of land occupied or capable of being occupied by a building or group of buildings

devoted to a common use or combination of uses, together with the customary accessories and open spaces belonging to the same. Utility and drainage easements located within the lot shall be deemed to be a part of that lot.

- a. **Lot Area (Size).** The total horizontal area within the legal lot lines of a lot exclusive of any portions of the lot which lie within street rights-of-ways.
- b. **Lot, Corner.** A lot which occupies the interior angle at the intersection of two (2) street lines which make an angle of more than forty-five (45) degrees and less than one-hundred and thirty-five (135) degrees with each other. The street line forming the least frontage shall be deemed the front of the lot except where the two (2) street lines are equal, in which case the owner shall be required to specify which is the front when requesting a zoning permit.
- c. **Lot Depth.** The average horizontal distance between the front and rear lot lines.
- d. **Lot, Interior.** A lot other than a corner lot.
- e. **Lot Line.** A line of record bounding a lot which separates one lot from another lot or separates that lot from a public or private street or any other public space.
- f. **Lot Line, Front.** The lot line separating a lot from a street right-of-way.
- g. **Lot Line, Interior.** A lot line which does not have street frontage.
- h. **Lot Line, Rear.** The lot line opposite and most distant from the front lot line.
- i. **Lot Line, Side.** Any lot line abutting another lot and which is not a front or rear lot line.
- j. **Lot of Record.** A lot or combination of contiguous lots described pursuant to the most current plat or metes and bounds description or descriptions recorded in the office of Gaston County Register of Deeds.
- k. **Lot, Panhandle.** A lot that has the appearance of a “frying pan” or flay and staff in which the lot “handle” is most often used as the point of access. An illustrative example of a panhandle lot is as follows:



The area of the lot “handle” as illustrated above, shall not be used in determining

minimum lot area. Only the lot “body” may be used in determining lot area. In addition, the lot handle shall not be used in computing minimum setbacks with setbacks being determined using the lot body only. The length of the panhandle (i.e., that part of the lot that is too narrow to accommodate a dwelling unit and meet all setback requirements) can not exceed one-hundred (100) feet.

- k. **Lot, Through.** A lot which fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot.
- l. **Lot Width.** The distance between side lot lines measured at the required minimum front yard setback.
- m. **Lot Line House.** A single-family detached dwelling unit that is placed against one of the side lot lines. The dwelling unit has a front and rear yard but only one side yard.

Maintenance Services. A base of operations for building maintenance services including exterminator, carpet cleaning, janitorial service and minor repair services rendered off-site.

Manufactured Home (Mobile Home). A dwelling unit that: **(i)** is not constructed in accordance with the standards set forth in the North Carolina State Building Code (uniform residential building code for one and two-family dwellings), and **(ii)** is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis, and **(iii)** exceeds forty feet in length and eight feet in width. A structure that would otherwise be characterized as a manufactured home except that it is not used or held ready for use as a dwelling unit (e.g., is used as an office or some other business use) shall not be deemed a manufactured home.

Manufactured Home (Mobile Home), Class A. A manufactured home constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies each of the following additional criteria:

- (a) The minimum width (the width being the narrower of the two overall dimensions) of the main body of the manufactured home as assembled on the site shall be at least twenty-two (22) feet. The minimum length of the manufactured home shall be at least twenty (20) feet greater than its width.
- (b) The pitch of the roof of the manufactured home has a minimum vertical rise of one foot for each four feet of horizontal run, the roof is finished with a type of shingle that is commonly used in standard residential construction and which does not exceed the reflectivity of gloss white paint, and the roof has an overhang (eave) extending at least ten (10) inches from each vertical exterior wall.

- (c) The exterior siding consists of wood, hardboard, vinyl, brick or aluminum and shall be comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction, and which does not exceed the reflectivity of gloss white paint.
- (d) A continuous, permanent masonry foundation or masonry curtain wall, un-pierced except for required ventilation and access, shall be installed upon a poured concrete footer after placement on the lot, and before occupancy.
- (e) The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.
- (f) The manufactured home is set up on the site in accordance with the standards set by the N.C. Department of Insurance.
- (g) Stairs, porches, entrance platforms and other means of entrance and exit to the manufactured home shall be installed and constructed in accordance with the standards set by the N.C. Department of Insurance.
- (h) The manufactured home is oriented on the site in such a manner that the side having the main entrance, and by design intended to be the front of the manufactured home is generally parallel to a public street abutting the site.

Manufactured Home (Mobile Home), Class B. A manufactured home that meets all of the criteria of a Class A manufactured home, except criteria (a), (b), (c), (d), or (h).

Manufactured Home (Mobile Home), Park. A parcel of land under single ownership on which two or more manufactured homes are occupied as residences.

Medical Clinic. A facility where one or more medical professionals (medical doctor, dentist, osteopath, chiropractor, optometrist, podiatrist, physical therapist) provide outpatient treatment services.

Memorial Sign or Plaque. A sign commemorating the erection and/or dedication of a building including name of building, date of erection, and other information such as architect, contractor, or others involved in a building's creation, cut into or attached to a building surface.

Mini-Warehouse. A structure containing separate storage spaces of varying sizes leased or rented on an individual basis for indoor storage purposes. No outdoor storage shall be allowed in conjunction with the facility.

Mobile Home. See "Manufactured Home".

Modular Home. A dwelling unit constructed in accordance with the standards set forth in North Carolina State Building Code (uniform residential code for one and two-family dwellings), and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. A modular home shall be deemed a single-family dwelling as defined in this Ordinance.

Motel. An establishment providing transient accommodations containing six (6) or more rooms.

Multi-Family Development. A tract of land under single individual, corporate, firm, partnership or association ownership, or under common control evidenced by duly recorded contracts or agreements; planned and developed as an integral unit in a single development operation or in a programmed series of development operations. Such development shall consist of two or more duplex buildings, or three (3) or more dwelling units sharing one (1) or more common walls. The development shall have a unified or coordinated design of buildings and a coordinated organization of service areas and common open space area.

Nonconforming Lot. Any lot of record that does not meet the minimum area or width requirements established in these regulations or any amendment thereto.

Nonconforming Sign. Any sign, that on the effective date of this Ordinance or the date of any subsequent amendment thereto, does not conform to one or more of the regulations set forth in this Ordinance.

Nonconforming Structure. Any structure lawfully existing on the effective date of these regulations, or any amendment to it rendering such structure nonconforming, which does not comply with all of the standards and regulations of this Ordinance or any amendment thereto.

Nonconforming Use. A use or activity that does not conform to the use regulations of this Ordinance for the district in which it is located either at the effective date of this Ordinance or as a result of any subsequent amendments to this Ordinance.

Nursery. A commercial enterprise on land used to raise flowers, shrubs and plants for sale. Nurseries may use greenhouses for the raising of such items.

Nursing Care Facilities. A facility that serves people who need nursing and supportive domiciliary care. Nursing care is provided for eight or more hours per day.

Office. A room or group of rooms used for the conduct of a business, profession, service, industry or government where retail trade is not conducted.

Office Building. A building used primarily for conducting the affairs of a business, profession, service, industry or government, or like activity, that may include ancillary services primarily for office workers such as a restaurant, coffee shop, newspaper or candy stand.

Office Trailer. A building manufactured in a plant and transported to the site and used exclusively for business or office purposes on a temporary basis.

Open Storage. An unroofed area for the storage of bulk materials or discarded items whether fenced or not but not including items and non-bulk materials openly displayed for the purpose of retail sale.

Outlet Store, Accessory. A sales facility located on the same premises and accessory to a principal manufacturing, distribution, or shipping facility. The accessory outlet store must be clearly incidental to the principal use. If open to the general public, at least fifty percent (50%) of the value of goods sold must either:

- (1) be manufactured by the owner of the store if owner is manufacturer; or
- (2) be salvage goods distributed from the principal use, if principal use is a distribution facility; or
- (3) be salvage goods obtained by the owner of the principal use if owner is a freight carrier business

If open only to employees of the owner or operator of the principal use the requirement to meet either criteria (1) (2) or (3) above does not apply.

Parapet. That portion of a building wall or false front that extends above the roofline.

Parking Bay. The parking module consisting of one or more sets of one or two rows of parking spaces and the aisle from which motor vehicles enter and leave.

Parking Space. A storage space of not less than nine (9) feet by nineteen (19) feet for one (1) automobile, plus the necessary access space. All off-street parking spaces shall be located outside the dedicated street right-of-way.

Patio House. A single-family house built on a small lot enclosed by garden walls that provide privacy. Dwelling units themselves are detached but may be connected to other dwelling units by means of garden walls. Dwellings may be located with one or two sides on lot lines and in such cases the outside wall of the dwelling forms the privacy wall for the adjoining lot.

Pawn Shop. A shop where money is lent on the security of personal property pledged. Such property may then later be sold on a retail basis at the shop.

Permit, Building. Written permission issued for the construction, repair, alteration or addition to a structure.

Permitted Use. A use allowed within a zoning district as a matter of right (as opposed to a "conditional use")

Postal Store. A commercial establishment that specializes in the sale of postal and packaging items and mailing and parcel expressing services. Private mail boxes, rental service, photocopying and facsimile transmission (FAX) services may also be offered.

Premises. A parcel of real property with a separate and distinct number of designation shown on a recorded plat, record of survey, parcel map or subdivision map. When a lot is used together with one or more contiguous lots for a single use or planned development, all of the lots so used,

including any lots used for off-street parking, shall be considered a single premises for purposes of these regulations.

Principal Use. The primary or predominant use of any lot.

Private Residential Quarters. An accessory dwelling either attached or part of the principal residential use or separate from the principal use in the form of a guest house or garage apartment provided that such dwelling is not rented or occupied for gain and provided that no accessory building containing such use is constructed on a lot until the construction of the main building has commenced. All private residential quarters shall require a permit to be issued annually by the Zoning Administrator. The principal dwelling on the lot containing the private residential quarters shall be owner-occupied.

Produce Stand, Home. The sale of or agricultural or horticultural products at a free-standing retail stand structure that is located on the lot upon which these products are grown. Such lot shall contain a residential structure. A “home produce stand” shall be considered a “customary home occupation” and shall be governed by regulations contained in Section 5.1.

Public Safety Station. A facility operated by a public agency, a private contractor thereof, or by a private non-profit volunteer organization and used for the base of operations and/or housing of equipment or personnel for the provision of dispatched public safety services including law enforcement, fire protection, rescue services, and/or emergency medical services. Such a facility may contain living quarters for on-duty personnel. It may also contain up to four holding cells for the temporary custody of persons under arrest. Facilities for the maintenance of equipment housed at the operation site are also permitted.

Recycling Depository. A structure at which newspapers, aluminum cans, glass, corrugated paper or backyard waste (i.e., grass cuttings, tree limbs, etc.) are deposited for the purpose of being recycled. All such goods shall be housed at all times within the structure. The outdoor \ storage of all goods to be recycled shall be prohibited. Closed bins shall be deemed to be a structure for the purpose of this definition.

Recycling Sorting Facility. A facility at which recyclable goods (e.g., newspapers, aluminum cans, backyard waste, paper products, etc) are deposited and sorted for shipment. A limited amount of goods processing (e.g., glass crushing) may occur on-site. In no case, however, shall any manufacturing of usable goods take place on-site.

Rest Home (Home for the Aged and Infirm) - Facilities licensed to provide domiciliary care for more than six (6) elderly or disabled adults who do not need nursing care but are no longer able to remain in their own homes because they need assistance in meeting their day-to-day basic needs. Such facilities serving six (6) or fewer people are deemed family care homes.

Restaurant. A commercial establishment other than a drive-in or fast food restaurant where food

and drink are prepared, served and consumed primarily within the principal building.

Restaurant, Drive-In. A building or portion thereof where food and/or beverage are sold in a form ready for consumption and where all or a significant portion of the consumption takes place or is designed to take place outside the confines of the building, often in a motor vehicle on the site.

Restaurant, Fast Food. An establishment whose principal business is the sale of prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building, on the restaurant premises or off-premises.

Satellite Dish. An apparatus capable of receiving a communications signal from a transmitter relay located in planetary orbit.

Service Station. Any building, land area or other premises, or portion thereof, primarily used or intended to be used for the retail dispensing or sales of fuels for vehicles and for any minor repair work conducted as an accessory use. Wrecker service shall be considered an accessory use provided that any inoperative vehicle towed to the service station by a wrecker vehicle is stored on premises either inside or outside the service station. Uses permissible at a service station do not include major mechanical and body work, straightening of body parts, painting, welding, or other work involving an excessive amount of noise, glare, fumes, or smoke.

Setback. A distance measured inward from a property line which remain unoccupied and unobstructed upward except as may be permitted elsewhere in this Ordinance.

Setback, Front. That portion of the front yard that shall remain unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in this Ordinance.

Setback, Rear. That portion of the rear yard that shall remain unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in this Ordinance.

Setback, Side. That portion of the side yard that shall remain unoccupied and unobstructed from the ground upward except as may be permitted in this Ordinance.

Shopping Center. Three (3) or more principal retail uses planned, developed and managed as a unit and related in location, size and type of shop to the needs of the trade area which is being serviced and with customer and employee parking provided on site and the provision of goods delivery separated from customer access. Shopping centers shall be construed to include all out parcels, whether or not developed, located within the shopping center. Shopping centers are divided into three classes - Class A, Class B, and Class C.

Shopping Center, Class A - A small neighborhood shopping center that does not exceed a total of 10,000 square feet in gross floor area.

Shopping Center, Class B - A community shopping center that has at least 10,000 but no more than 50,000 square feet of gross floor area.

Shopping Center, Class C - A shopping center that is designed to serve the entire community and has over 50,000 square feet of gross floor area.

Shrub. A woody bush-type plant that has branches that is at least two (2) feet tall above the highest root at the time of planting.

Sign. Any object, device, or structure, or part thereof, situated outdoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letter, figures, designs, symbols, fixtures, colors, illumination, or projected images. Signs do not include the flag or emblem of any nation, organization of nations, state, city, or any fraternal, religious or civic organizations; works of art which in no way identify a product; or scoreboards located on athletic fields.

Sign, Abandoned. A sign which no longer identifies or advertises a bona fide business, leaser, service, owner, product, or activity, and/or for which no legal owner can be found.

Sign, Above Roof. A sign which is displayed above the roof line.

Sign, Advertising. A sign that directs attention to or communicates information about a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the premises where the sign is displayed.

Sign, Animated. Any electronic message board/panel that displays a moving message, lights, symbol, or scene, or change of lighting to depict action or to create a special effort or scene. Animated signs may also be characterized by displays moving across, or within the message board or panel, or around the perimeter of the sign frame.

Sign, Attached. Any sign attached to, applied on, or supported by any part of a building (such as a wall, roof, window, overhang, canopy, awning, arcade or marquee) which encloses or covers usable space.

Sign, Campaign or Election. A sign, other than a billboard or off-premise advertising sign, that advertises a candidate or issue to be voted upon on a definite election day.

Sign, Canopy or Awning. A sign attached to or painted or printed onto a canopy or awning. For the purposes of this Ordinance, the permitted size of a canopy or awning sign will be calculated on the basis of the size of the building wall to which the canopy is attached. It will, for measuring purposes, be deemed a wall sign.

Sign, Changeable Copy. Any sign that is characterized by changeable characters or symbols without regard to the method of attachment. Electronic changeable copy signs (electronic message boards/panels) that display periodic static messages, symbols, or scenes.

Sign, Construction. A sign placed at a construction site identifying or announcing the project or the name of the architect, engineer, contractor, financier, or others involved in the development of the project.

Sign, Detached. A sign supported by one (1) or more upright poles, columns or braces permanently anchored or secured in or upon the ground surface and not attached to any building or structure; or any sign, whether it is on a trailer, wheels or otherwise, which is not permanently anchored or permanently attached to the ground or building.

Sign, Directional. A sign fronting on a road containing only the name of the principal use, directional arrow and mileage to the principal use. Such principal use shall not be visible to the motorist at the location at which the sign is placed.

Sign, Directory. A sign on which the names and locations of occupants or the use of a building or property is identified.

Sign, Double-faced. A sign with two (2) faces.

Sign, Electric. Any sign containing electric wiring. This does not include signs illuminated by an external source of light.

Sign, Flashing. A sign that uses an intermittent or flashing light source or windblown and/or mechanical moved reflective materials to attract attention.

Sign, Freestanding. Any sign that is not affixed or attached to a building and is securely and permanently mounted in the ground. Such sign may be a ground mounted sign, pole sign, or monument sign.

Sign, Government. Any temporary or permanent sign erected and maintained for any government purposes.

Sign, Ground Mounted. A sign which extends from the ground or which has a support which places the bottom thereof less than 2-1/2 feet from the ground directly beneath the sign.

Sign, Identification. A sign which displays only the name, address, and/or crest, or insignia, trademark, occupation or profession of an occupant or the name of any building on the premises.

Sign, Incidental. A sign used in conjunction with equipment or other functional elements of a use or operation. These shall include, but not be limited to drive through window menu boards, and signs on automatic teller machines, gas pumps, vending machines, or newspaper delivery boxes.

Sign, Instructional. An on-premise sign designed to guide vehicular and/or pedestrian traffic by using such words as "Entrance", "Exit", "Parking", "One-Way", or similar directional instruction, but not including any advertising message. The name or logo of the business or use to which the sign is giving direction may also be included on the sign.

Sign, Kinetic. A wall-mounted computer-programmable lighting system that displays changing and moving colors.

Sign, Illegal. A sign which does not meet the requirements of this Chapter and which has not received nonconforming status.

Sign, Illuminated. A sign either internally or externally illuminated.

Sign, Integral. Names of buildings, dates of erection, monumental citations, tablets and the like when carved into stone, concrete or similar material or made of bronze, aluminum or other permanent type construction and made an integral part of the building.

Sign, Lighted. A sign illuminated only by light cast upon the sign from an external light source.

Sign, Luminous. A sign lighted by or exposed to artificial lighting either by lights on or in the sign.

Sign, Marquee. See definition for "Canopy or Awning Sign".

Sign, Memorial or Plaque. A sign commemorating the erection and/or dedication of a building including a name of building, date of erection, and other information such as architect, contractor, or others involved in a building's creation, cut into or attached to a building surface.

Sign, Monument. A monolithic sign in which the bottom of the sign is flush with the ground and the vertical dimension of the sign is greater than the horizontal dimension.

Sign, Multi-unit. A freestanding sign which contains three (3) or more identification signs for a multi-occupancy premises, such as a shopping center.

Sign, Neon. Any sign with characters made of exposed neon tubing. This definition does not include illuminated signs whose interior source of light is made of neon tubing or signs that are back lighted with neon tubing.

Sign, Off-premise. A sign that directs attention to a business, commodity, service, establishment, or other activity conducted, sold, or offered at a location other than the premises on which the sign is erected.

Sign, On Premises. A sign that draws attention to or communicates information about a business, service, commodity, accommodation, attraction, or other enterprise or activity that exists or is conducted, sold, offered, maintained, or provided on the premises where the sign is located.

Sign, Nonconforming. Any sign which was lawfully erected in compliance with applicable code provisions and maintained prior to the effective date of this Ordinance, and which fails to conform to all applicable standards and restrictions of this Ordinance.

Sign, Pole. A detached sign erected and maintained on a freestanding frame, mast, or pole and not attached to any building but not including ground-mounted signs. The bottom of such signs shall be greater than two and one half (2-1/2) feet from the ground directly beneath the sign.

Sign, Political. A sign that advertises a candidate or issue to be voted upon a definite election day.

Sign, Portable. Any sign not permanently attached to the ground or other permanent structure, nor specifically constructed for such attachment; or a sign designed to be transported, including but not limited to the following: signs designed to be transported by means of wheels; signs converted to A- or T- frames; menu and sandwich board signs; gas or hot air filled balloons; umbrellas used for advertising. These type signs shall be classified as either Temporary or Special Purpose Signs .

Sign, Portable Changeable Copy. A non-lighted portable sign not exceeding thirty-two (32) square feet in area designed so that letters or numbers attached to the sign can be periodically changed to indicate a different message.

Sign, Primary. The main or principal sign located on a premises.

Sign, Projecting. Any sign other than a wall, awning, canopy, or marquee sign, which is affixed to a building and is supported only by the wall on which the sign is mounted.

Sign, Protective. A sign less than one hundred (100) square inches in area and with letters less than four (4) inches in height, which is commonly associated with safeguarding the permitted uses of the occupancy. Examples include "bad dog," "no trespassing," and "no solicitors."

Sign, Public Interest. A sign on private property that displays information pertinent to the safety or legal responsibilities of the general public such as "Warning" and "No Trespassing" signs.

Sign, Real Estate. A sign that is used to offer for sale, lease, or rent the premises upon which such sign is placed.

Sign, Revolving. A sign which revolves three hundred sixty (360) degrees.

Sign, Roof. A sign erected or maintained in whole or in part upon or over the roof or parapet of a building.

Sign, Roof Sign, Integral. Any sign erected or constructed as an integral part of a normal roof structure of any design, such that no part of the sign extends vertically above the highest portion of the roof and such that no part of the sign is separated from the rest of the roof by a space of more than six (6) inches. Chimneys or other similar features are not an integral part of a normal roof structure. An integral roof sign shall be considered to be a wall sign and shall be subject to the regulations pertaining to wall signage.

Sign, Sandwich board. A temporary "A"-frame or easel sign listing specials of the establishment.

Sign, Setback The shortest horizontal distance from the property line or right-of-way to the nearest point (leading edge) of the sign or its supporting member whichever is nearest to the property line or right-of-way.

Sign, Portable sidewalk A temporary "A"-frame, "T"-frame, or easel sign listing specials of the establishment. Sign shall be displayed only during the business operating hours of the business/use being advertised. Such signs shall be sufficiently weighted so as to be stable in windy conditions.

Sign, Single Face. A sign, only one (1) side of which is visible.

Sign, Special Purpose. A temporary sign to announce sales, new products, openings or closeouts and other special events.

Sign, Subdivision or Neighbor Identification. A sign containing the name of the subdivision or neighborhood in which it is located.

Sign, Time and/or Temperature. A changeable copy sign containing numerals which may be alternately displayed to show time and/or temperature. It shall continuously show one message a minimum of three (3) seconds time before switching to the other message.

Sign Skirt. A sign skirt is a decorative covering of the post(s) or pole(s) which supports a freestanding sign. The area of a sign skirt which is less than fifty (50) percent of the allowable area of the freestanding sign to which the sign skirt is attached shall not be counted toward the sign area requirements of this Chapter. No advertising copy shall be permitted on a sign skirt.

Sign Support. Any pole, post, strut, cable or other structural fixture or framework necessary to hold and secure a sign.

Sign, Temporary. See definition for "Special Purpose Sign".

Sign, Vehicular. Signs on parked vehicles or trailers visible from the public right-of-way where the primary purpose of the vehicle is to advertise a product or to direct people to a business or activity located on the same or nearby property. For the purposes of this Ordinance vehicular signs shall not include business logos, identification or advertising on vehicles primarily used for other business or recreational purposes.

Sign, Wall. Any sign directly attached to an exterior wall of a building or dependent upon a building for its support with its exposed face parallel or approximately parallel to the plane of the building or structure on which the sign is affixed. Signs directly painted on walls shall be deemed wall signs.

Sign, Window. A sign in a building window intended to be seen primarily or entirely from outside the building.

Small Tree. A tree which, at the time of planting has a caliper of at least one and one-half (1-1/2)

inches and a height of at least five (5) feet and of a species which at maturity, can be expected to reach a height of at least twenty (20) feet under normal growing conditions in the local climate.

Street. A right-of-way on which is constructed a road surface for vehicular traffic which affords the principal means of access to abutting properties.

Street Property Line. An area of land occupied or intended to be occupied by a public street, including areas offered for dedication to the public for such purpose, areas claimed by the City of Cherryville or the State of North Carolina for such purposes, or actually used for such purposes.

Structure. A combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water, provided however, a surface parking area along with its appurtenant fixtures (curbs and gutters, parking and traffic regulation signs, storm drainage) shall not be deemed a structure.

Structure, Accessory. A building separate and subordinate to the principal building on the same lot as the principal building used for purposes customarily incidental to the principal building.

Structure, Principal. A structure in which is conducted by principal use on which it is located.

Tattoo Parlor/Body Piercing Establishment. An establishment whose principal business activity is: (1) Placing ink under the skin using needles that result in the coloration of the skin or, (2) for piercing of the body (other than for the ear).

Telecommunication Tower and Facilities. A structure or structures (including any accessory structures required to house transmitting or maintenance equipment) designed to support antennae used for transmitting or receiving communication transmissions. A “telecommunication tower” shall not be deemed to be an “amateur radio tower” or television broadcast station tower.

Town House. Attached dwellings on separate lots that share common walls at the side lot lines. Yards are small.

Twin House. Two dwelling units on separate lots joined by a common building wall along the property line.

Unobstructed Open Space. Land not covered by buildings or structures.

Village House. A single-family detached dwelling built on a small lot (typically smaller than the minimum lot size for the zoning district). Land saved by use of smaller lots is dedicated for common use. Houses may be placed close to the street to maximize rear yards. Shared driveways with separate parking areas may be utilized.

Wholesale Sales Establishment. A business where more than fifty (50) percent of its gross sales are for resale purposes as evidenced by sales tax reports submitted to the State of North Carolina Department of Revenue.

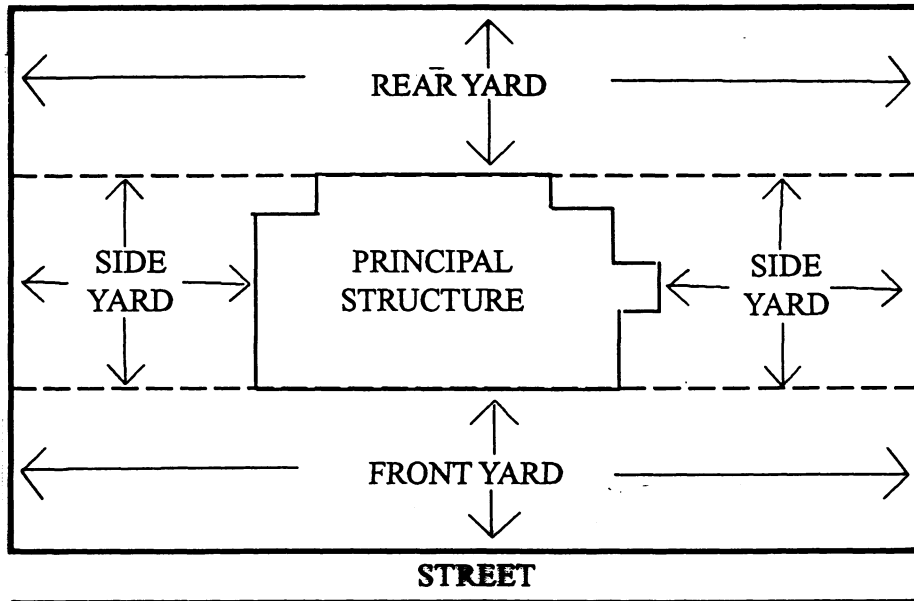
Yard, Front. An area measured between the edge of the public street right-of-way line, and the

front of a building, projected to the side lot lines.

Yard, Rear. A yard extending the full width of the lot on which a principal building is located and situated between the rear lot line and a line parallel thereto and passing through the point of the principal building nearest the rear lot line.

Yard, Side. A space extending from the front yard to the rear yard between the principal building and the side lot line as measured perpendicular from the side lot line to the closest point of the principal building.

Illustration of Lot Yards:



Yard Sale (Garage Sale, Attic Sale, Rummage Sale). An occasional sale on a residential lot conducted by a household or a group of up to four (4) households, or by a nonprofit organization, at which surplus and primarily used household goods and/or clothing are sold. In a case where such sales are conducted on the same property more than twelve (12) days per year (or in the case of non profit organizations more than twelve (12) days per year) or, in cases when new or used merchandise, purchased for resale, are resold it shall be deemed a flea market and not a yard sale.

Zoning Administrator. The administrative official appointed by the City Manager of the City of Cherryville to administer the Zoning Ordinance, issue zoning permits and issue zoning citations.

PART 5

GENERAL PROVISIONS

Section 5.1 Customary Home Occupations

Customary home occupations may be established in any dwelling unit. The following requirements shall apply in addition to all other applicable requirements of this Ordinance for the district in which such uses are located:

- 5.1.1** The home occupation shall be clearly incidental and subordinate to the residential use of the dwelling and shall not change the residential character of the dwelling. (The operator of the customary home occupation must reside on the same lot as where the customary home occupation takes place.)
- 5.1.2** No accessory buildings or outside storage shall be used in connection with the home occupation with the following exceptions:
 - a. Home produce stands are allowed as freestanding structures as permitted under this section.
 - b. Otherwise, customary home occupations may take place in fully enclosed accessory structures that are located in the rear yard only, provided such structure is located at least twenty-five (25) feet from any lot line and at least one-hundred (100) feet from any principal residential structure located on another lot. Said structure shall have a maximum area of five hundred (500) square feet and shall also be in conformance with all other accessory structure requirements contained in Section 5.11.
- 5.1.3** Use of the dwelling for the home occupation shall be limited to twenty-five percent (25%) of the area of the principal building.
- 5.1.4** Residents of the dwelling plus a maximum of one (1) non-resident may be engaged in a home occupation or otherwise report to work at the dwelling.
- 5.1.5** Except for products for sale associated with home produce stands, no display of products, goods or materials associated with the customary home occupation shall be visible from any adjoining lot or street (shall be permitted) and only articles made or reconditioned on the premises may be sold; except that nondurable articles incidental to a service conducted at the home occupation may be sold on the premises.
- 5.1.6** No external alterations inconsistent with the residential character of the principal building or accessory structure shall be permitted.

- 5.1.7** Only vehicles used primarily as passenger vehicles (i.e., automobiles, vans and pick-up trucks) shall be permitted in connection with the conduct of the customary home occupation. Provided however, the parking of tractors for freight trucking without the trailer shall be permitted.
- 5.1.8** No traffic shall be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood. Any need for parking generated by the conduct of the home occupation shall be provided off the road right-of-way in the manner and in the amount provided for in Part 10 of this Ordinance.
- 5.1.9** Chemical, mechanical, or electrical equipment that creates odors, light emission, noises, or interference in radio or television reception detectable outside the dwelling (or accessory structure) shall be prohibited.
- 5.1.10** Home occupations shall be conducted between the hours of 7:00 A.M. and 9:00 P.M. Non-resident workers may only be engaged during these hours and customers and deliveries relative to the business may also be only made during these hours.
- 5.1.11** All customary home occupations shall require the issuance of a certificate of compliance by the Zoning Administrator.
- 5.1.12** Tutoring or home instruction classes shall be limited to a maximum of ten (10) students at a time.
- 5.1.13** Signage requirements for home produce stands are found in Section 5.1.14. Otherwise, external signs associated with a customary home occupation are allowed in the R-0 district and all other non-residential zoning districts only. The following sign regulations shall apply:
- a. One (1) non-illuminated professional name plate, occupational sign, or business identification sign mounted flush to the dwelling unit and not more than two (2) square feet in area shall be allowed per customary home occupation.
 - b. In lieu of a flush mounted sign, a free-standing sign of up to two (2) square feet and not higher than five (5) feet may be erected in the front yard not closer to the street than a line located equidistant between the front of the principal dwelling and the street right-of-way. In no case shall a freestanding sign be located within a sight triangle.

5.1.14 Home produce stands shall be governed as follows:

- a. The stand structure shall not be placed in a road right-of-way. If a freestanding structure is used, it shall be no closer than ten (10) feet from any side lot line [or twenty feet, if the side lot line abuts a Residential (R) zoning district, except R-40].
- b. Screening shall not be illuminated for any freestanding structure.
- c. A freestanding produce stand structure may not be a permanent structure and shall be removed nightly. An unlit temporary sign, not greater than two (2) square feet, that advertises the produce sales may be placed on the property each day upon which sales take place.
- d. The maximum display area for the produce stand shall be two-hundred (200) square feet, except a maximum of four-hundred (400) square feet shall be allowed in the R-40 zoning district.

Section 5.2 Screening

The intent of these screening requirements shall be to create a screen between zoning districts and other zoning districts or to screen certain uses in order to minimize potential nuisances such as the transmission of noise, dust, odor, litter, and glare of lights; to reduce the visual impact of unsightly aspects of adjacent development; to provide for the separation of spaces; and to establish a sense of privacy. Any screening required under this Section shall materially screen the subject use between the ground level and the height of the required screening from the view of the adjoining property.

5.2.1 Screening shall be required under the following situations:

- a. When a B-1, B-2, B-3 or GMC District abuts a Residential (R) District, screening shall be provided on the lot(s) which are located in the B-1, B-2, B-3 or GMC District at the time such lots are developed (except with a residential use) or when any existing and/or accessory structure on such lot is expanded. In no instance shall screening be required for any residential use located in a B-1, B-2, B-3, or GMC District except as herein provided.
- b. In an R-O District where a non-residential use adjoins a residential use, screening shall be provided on the non-residential use lot, except that screening shall not be required where the adjoining residential use is located in a B-1, B-2, B-3 or GMC District.
- c. All multi-family developments shall be screened from all other lots that lie in a Residential (R) District except that screening shall not be required around a multi-family development whose side and rear boundaries abut another multi-family development.

- d. Within any B-1, B-2, B-3 or GMC District, screening shall be required for the open storage of any non-retail goods or any unenclosed structure consisting of a roof, but no walls used for storage of materials, products, wastes or equipment, whenever such storage or structure is located within one-hundred (100) feet of the street right-of-way line. Screening shall be placed on the property so as to effectively screen such open storage or structure from the public view from any street right-of-way. The use of a fence or wall constructed pursuant to 5.2.2-b of this Ordinance shall be considered an acceptable method (as with planting) for screening outdoor storage.
- e. Other situations as specifically listed in the Zoning District Regulations (Part 7 of this Ordinance) or in the Conditional Use Regulations (Part 13 of this Ordinance).

5.2.2 Location of Screening

Any screening required by Subsection 5.2.1 shall be located along side and/or rear property lines of the lot(s) in question except that screening shall not be required along any street right-of-way unless otherwise stipulated in this Ordinance.

Wherever an industrial use is located on the opposite side of a street right-of-way from a (R) residential zone, screening shall be installed on the industrial use property along said street right-of-way.

5.2.3 Specifications for Screening

Screening may be in the form of natural plantings, berms or walls or fences. Screening shall be encouraged, however, in the form of natural plantings. Where sufficient room exists to place a screen consisting of natural plantings or maintain an existing screen of natural plantings, such natural plantings shall be used as the required form of screening. Otherwise, screening in the form of a berm, wall or fence may be used. The Zoning Administrator may approve a combination of natural planting, berm, wall or fence, if he determines that the spirit and intent of this section are met by such combination.

- a. Natural Plantings. Where natural plantings are used, a buffer strip of at least twenty (20) feet in width [ten (10) feet for a non-residential use in the R-O District] shall be planted. This strip shall be free of all encroachment by structures, parking areas or other impervious surfaces. The amount and type of buffer materials to be planted per one hundred (100) linear feet shall be as indicated in Figure 5.2.2. At least 75 percent of the Natural Plantings shall be evergreen species which are locally adapted to the area. See Figure 5.2.3 for acceptable plant species.

All materials planted shall be free from disease, installed in a fashion that ensures the availability of sufficient soil and water to sustain healthy

growth, properly guyed or staked and planted in a manner which is not intrusive to utilities and/or pavement and planted in accordance with Section 5.2.6 of this Ordinance.

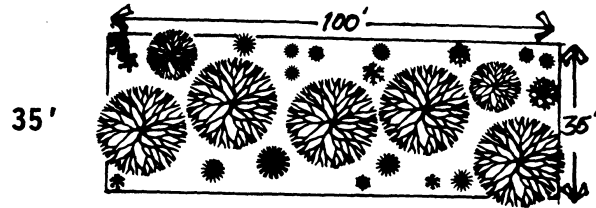
- b. Walls or Fences. Any wall shall be constructed in a durable fashion with a finish surface of brick, stone or other decorative masonry material approved by the Zoning Administrator. Fences shall be constructed of wood in a durable fashion and of durable, weather resistant wood fencing materials and of consistent pattern. No wall or fence shall be less than six (6) feet nor greater than eight (8) feet in height above grade. All walls or wood fences used for screen purposes shall be opaque. Walls and fences shall be constructed in accordance with Section 5.2.6 of this Ordinance.
- c. Berms. All berms shall be grassed and/or planted with other plant materials. If grassed alone, the berm shall be no less than six (6) feet nor greater than nine (9) feet in height. If landscaped, the berm shall be at least three (3) feet in height and contain at least twenty (20) shrubs per one hundred (100) linear feet. Said shrubs shall be a species that can be expected to materially screen the development site within five (5) years of planting. No slope of a berm shall exceed a slope greater than one (1) foot of rise for every three (3) feet in plane.

FIGURE 5.2.2

REQUIRED BUFFER STRIP ALTERNATIVES (PER 100 LINEAR FEET) FOR NATURAL PLANTINGS

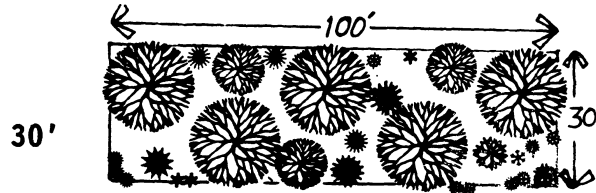
ALTERNATIVE

1. 5 LARGE TREES (L)
2 SMALL TREES (T)
19 SHRUBS (S)



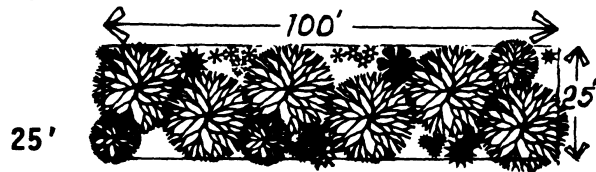
OR

2. 5 LARGE TREES (L)
3 SMALL TREES (T)
22 SHRUBS (S)



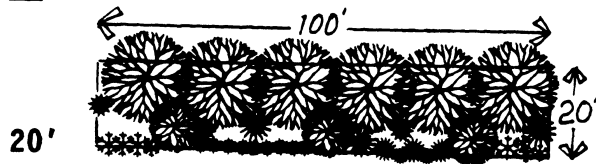
OR

3. 6 LARGE TREES (L)
3 SMALL TREES (T)
24 SHRUBS (S)



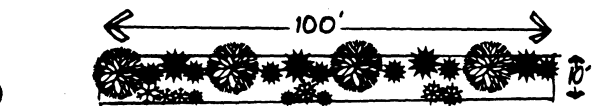
OR

4. 6 LARGE TREES (L)
3 SMALL TREES (T)
28 SHRUBS (S)



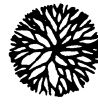
OR

5. (FOR R-0 DISTRICT ONLY, AS)
SET FORTH IN 5.2.1-B)
4 SMALL TREES (T)
20 SHRUBS



LEGEND

Large Tree



Small Tree



Shrubs



FIGURE 5.2.3

At least 75 percent of the Natural Plantings shall be evergreen species which are locally adapted to the area.

APPENDIX 1: LIST OF ACCEPTABLE PLANT SPECIES

TABLE INSET: Large Maturing Trees

Botanical Name	Common Name
Acer rubrum	Red maple
Acer saccharum	Sugar Maple
Amelanchier Canadensis	Serviceberry
Betula nigra	River birch
Carya illinoensis	Pecan
Carya ovata	Shagbark hickory
Carya glabra	Pignut hickory
Carya cordiformis	Bitternut hickory
Cedrus deodara	Deodar Cedar
Celtis occidentalis	Hackberry
Cupressocyparis leylandii	Leyland cypress
Diospyros virginiana	Persimmon
Fagus grandiflora	American beech
Fraxinus americana	White ash
Fraxinus pennsylvanica	Green ash
Ginkgo biloba	Ginkgo
Juniperus virginiana	Eastern red cedar
Liquidambar styraciflua	Sweetgum
Liriodendron tulipifera	Tulip poplar
Magnolia grandiflora	Southern magnolia
Nyssa sylvatica	Black gum
Pinus echinata	Short leaf pine
Pinus nigra	Austrian pine
Pinus thunbergi	Japanese black pine
Pinus taeda	Loblolly pine
Pinus virginiana	Virginia pine
Platanus acerifolia	London planetree

<i>Quercus acutissima</i>	Sawtooth oak
<i>Quercus alba</i>	White oak
<i>Quercus bicolor</i>	Swamp white oak
<i>Quercus coccinea</i>	Scarlet oak
<i>Quercus falcata</i>	Southern red oak
<i>Quercus laurifolia</i>	Laurel oak
<i>Quercus nigra</i>	Water oak
<i>Quercus phellos</i>	Willow oak
<i>Quercus borealis</i>	Northern red oak
<i>Quercus shumardi</i>	Shumard oak
<i>Quercus velutina</i>	Black oak
<i>Quercus virginiana</i>	Live oak
<i>Sophora japonica</i> regent	Japanese pagoda tree
<i>Taxodium distichum</i>	Bald cypress
<i>Tsuga Canadensis</i>	Eastern hemlock
<i>Ulmus parvifolio</i>	Lacebark elm
<i>Ulmus alata</i>	Winged elm
<i>Zelkova serrata</i>	Japanese zelkova

TABLE INSET: **Small Maturing Trees**

Botanical Name	Common Name
<i>Acer campestre</i>	Hedge maple
<i>Carpinus betulus</i>	European hornbeam
<i>Carpinus caroliniana</i>	American hornbeam
<i>Cornus florida</i>	Flowering dogwood
<i>Cornus kousa</i>	Kousa dogwood
<i>Cercis canadensis</i>	Eastern redbud
<i>Crataegus phaenopyrum</i>	Washington hawthorne
<i>Elaeagnus angustifolia</i>	Russian olive
<i>Eriobotrya japonica</i>	Loquat
<i>Halesia carolina</i>	Carolina silverbell
<i>Hammamelis mollis</i>	Chinese witch-hazel
<i>Ilex fosteri</i>	Foster holly
<i>Ilex opaca</i>	American holly
<i>Ilex opaca</i> hume	Hume holly

Ilex x attenuata savannah	Savannah holly
Koelreutaria paniculata	Golden rain-tree
Magnolia soulangeana	Saucer magnolia
Magnolia stellata	Star Magnolia
Malus floribunda	Flowering crabapple
Ostrya virginiana	Ironwood
Oxydendrum arboreum	Sourwood
Prunus cerasifera pissardii	Purpleleaf plum
Prunus serrulata kwanzan	Kwanzan cherry
Prunus subhirtella pendula	Weeping cherry
Prunus yedoensis	Yoshino cherry
Prunus caroliniana	Carolina cherry laurel
Pyrus calleryana Bradfordi	Bradford pear
Pyrus calleryana `Redspire`	Redspire pear
Pyrus calleryana `Capital`	Capital pear

TABLE INSET:

Shrubs

Botanical Name	Common Name
Abelia grandiflora	Glossy abelia
Aucuba japonica	Japanese aucuba
Azalea hybrida	Glenn dale azalea
Azalea indica	Indian azalea
Azalea obtusum Kaempferi	Kaempferi azalea
Bambusa multiplex	Hedge bamboo
Berberis julianae	Wintergreen barberry
Berberis thunbergii	Japanese barberry
Camellia japonica	Camellia
Camellia sasanqua	Sasanqua Camellia
Chaenomeles speciosa	Flowering quince
Cleyera japonica	Cleyera
Euonymus alatus	Winged euonymus
Euonymus japonicus	Evergreen euonymus
Eleagnus pungens	Eleagnus
Forsythia intermedia	Forsythia
Hammamelis virginiana	Witch-hazel

Hydrangea quercifolia	Oakleaf hydrangea
Ilex aquifolium	English holly
Ilex cornuta	Chinese holly
Ilex cornuta burfordi	Burford holly
Ilex cornuta burfordi nana	Dwarf burford holly
Ilex crenata `convexa`	Convex Japanese holly
Ilex crenata `hetzi`	Hetzi Japanese holly
Ilex crenata `rotundifolia`	Roundleaf Japanese holly
Ilex "Emily Brunner"	Emily brunner holly
Ilex glabra	Inkberry holly
Ilex latifolia	Lusterleaf holly
Ilex pernyi	Perny holly
Ilex vomitoria	Yaupon holly
Jumperus chinensis pfitzeriana	Pfitzer jumper
Jumperus chinensis hetzi	Hetzi jumper
Laurus nobilis	Laurel
Ligustrum japonicum	Japanese privet
Ligustrum lucidum	Glossy privet
Ligustrum vicaryi	Vicary golden privet
Loropetalum chinense	Loropetalum
Mahonia bealei	Leatherleaf mahonia
Myrica cerifera	Wax myrtle
Nandina domestica	Nandina
Osmanthus fortunei	Fortune tea olive
Osmanthus fragrans	Fragrant tea olive
Osmanthus heterophyllus	Holly osmanthus
Osmanthus heterophyllus rotundifolius	Curly leaf tea olive
Photinia glabra	Fraser photinia
Photinia serrulata	Chinese photinia
Pieris floribunda	Mountain andromeda
Pieris japonica	Japanese andromeda
Pittosporum tobira	Pittosporum
Prunus laurocerasus	English laurel
Podocarpus macrophyllus maki	Podocarpus
Prunus laurocerasus angustifolia	Narrow leafed English laurel
Pyracantha coccinea	Scarlet firethorn

Raphiolepis umbellata	Yeddo-hawthorn
Spirea cantoniensis	Reves spirea
Spirea thunbergi	Thunberg spirea
Spirea prunifolia plena	Bridalwreath spirea
Spirea vanhouttei	Vanhoutte spirea
Taxus cuspidata	Japanese yew
Viburnum rhytidophyllum	Leatherleaf viburnum
Viburnum tinus	Laurestinus viburnum

5.2.4 Relief to Screening Requirements

In the event that unusual topography or elevation of a development site or the location or size of the parcel to be developed would make strict adherence to the requirements of this section serve no meaningful purpose or would make it physically impossible to install and/or maintain the required screen, the Zoning Administrator may alter the requirements of this Ordinance provided the spirit and intent of the screening requirement as outlined in Section 5.2 of this Ordinance are maintained. Such an alteration may occur only at the request of the developer, who shall submit a plan to the Zoning Administrator showing existing site features that would screen the proposed use and any additional screen materials the developer will plant or construct to screen the proposed use. The Zoning Administrator shall have no authority to provide said relief unless the developer demonstrates that existing site features and any additional screening materials will screen the proposed use as effectively as the required screen.

5.2.5 Existing Screened Areas

In cases where an existing screened area exists, further plantings and or improvements shall not be required provided said screened area is of sufficient width and depth and contains adequate and sufficient materials to meet the requirements of this Ordinance. If the screened area is deficient, the developer shall make needed improvements and/or additions to satisfy the screening requirements and intent of this Ordinance.

5.2.6 Screen Construction and Installation Maintenance

The plantings, fences, walls or berms that constitute a required screen shall be properly installed and maintained in order for the screen to fulfill the purpose for which it is established. Walls, fences and berms shall be constructed in a durable and attractive fashion in accordance with any applicable codes and generally accepted construction and workmanship practices and meet all specifications herein. Plant species shall be recommended for healthy growth under local climate conditions, not highly prone to disease and be expected to grow in a

manner to meet the spirit and intent of this section. Plant materials shall be planted in accordance with generally accepted and recommended planting and growing practices.

The owner of the property and any tenant on the property where a screen is required shall be jointly and severally responsible for the maintenance of all screen materials. Such maintenance shall include all actions necessary to keep the screened area free of litter and debris, to keep plantings healthy and growth from interfering with safe vehicular or pedestrian travel, or use of parking areas, or from creating any nuisances to adjoining property owners and to keep walls, fences, and berms in good repair and neat appearance. Any vegetation that constitutes part of a screen shall be replaced in the event that it dies. All screen materials shall be protected from damage by erosion, motor vehicles or pedestrians.

Section 5.3 Screening & Landscaping Required Prior to Issuance of Certificate of Compliance

After the effective date of this Ordinance, a Certificate of Zoning Compliance shall not be issued for any use located on a lot(s) upon which screening and/or landscaping is required, unless such screening and landscaping is provided on said lot(s) as hereby specified. Provided however, a temporary certificate of compliance may be issued on a one-time only basis to allow for the delaying of planting until the most appropriate planting season or due to the unavailability of required planting materials. Such temporary certificate of compliance can be for a period of up to 180 days. Prior to issuance of the temporary certificate of compliance, a bond shall be furnished to the City, with the amount of the bond being 1.5 times the cost of the plant material or other landscape improvements yet to be installed. Documentation supporting the costs contained in the bond from a landscape contractor, nursery, etc. shall be furnished to the City.

Section 5.4 Fences or Walls Permitted

Except as otherwise noted, fences or walls are permitted in the various districts subject to the following regulations:

5.4.1 In Residential (R) Districts:

- a. When fences or walls are installed in a required setback area (required front, side, or rear yard), the maximum height shall be six (6) feet, except when such fence or wall is installed pursuant to Section 5.2 of this Ordinance it shall not exceed eight (8) feet in height.
- b. No above ground electrical or barbed wire fences shall be allowed except in the R-40 district.

5.4.2 In B-1, B-2, B-3, and GMC Districts:

- a. Maximum height shall be twelve (12) feet except that no maximum shall apply to jails and prisons where said wall or fence is installed behind any required setbacks.
- b. No electrical fences except electrical livestock fences shall be permitted.

Section 5.5 Lot to Abut a Dedicated Street

No lots may be created after the effective date of this Ordinance which do not have at least thirty-five (35) feet of dedicated street right-of-way frontage except as follows:

- a. A lot not having thirty-five (35) feet of dedicated street right-of-way frontage may be created if located entirely within a planned shopping center or office park.
- b. A one-family residence may be constructed on a lot which existed at the effective date of this Ordinance which does not abut a dedicated street right-of-way provided the lot is given access to a dedicated street by an easement at least twelve (12) feet in width for the use of the dwelling established on such lot and further provided that such easement is maintained in a condition passable for automobiles and service and emergency vehicles. This easement may not be extended to provide access to any other lots or to any other residence not having frontage on a dedicated street.
- c. Exceptions may be made in planned developments where such exceptions are in harmony with the purpose and intent of Part 11 of this Ordinance.

Section 5.6 One Principal Building or Use

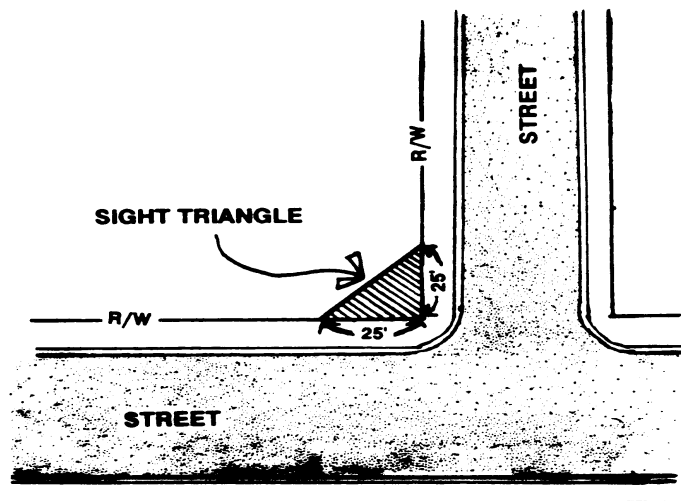
- 5.6.1** No more than one principal residential structure shall be located on a lot, except as part of a multi-family development or planned development in accordance with Part 11 of this Ordinance.
- 5.6.2** More than one principal structure devoted to a nonresidential use may be located on a lot provided that access is available from a public street to each building for use by service or emergency vehicles.
- 5.6.3** No more than one principal non-residential use per lot shall be allowed on a lot except as part of a shopping center, office building, planned unit development, etc.

This language shall not be construed to prohibit a residential use and an agricultural use from being located on the same lot.

Section 5.7 Visibility at Intersections

On a corner lot in any district (Other than the B-1 District) no planting, structure, sign, fence, wall or artificial obstruction to vision more than two and one-half (2-1/2) feet in height shall be placed or maintained within the triangular area formed by the intersection of front or rear lot lines and the side lot line and a straight line connecting points on said lot lines, each point being twenty-five (25) feet in distance from the point of intersection (See Figure 5.7). This prohibition may be waved by NCDOT on a case-by-case basis where it is determined that such waver would not impede motorist visibility or otherwise be detrimental to the public safety and welfare.

FIGURE 5.7



Section 5.8 Temporary Structures and Uses

Temporary structures and uses, when in compliance with all applicable provisions of this Ordinance and all other Ordinances of the City of Cherryville, shall be allowed. The following temporary structures and uses shall be permitted:

5.8.1 Construction trailers used in construction with construction projects shall not require special use or temporary use permits provided that the following conditions are met:

- (a) Such construction trailers shall be located upon a building site upon receipt of a valid building permit for the construction project.
- (b) Such construction trailers may remain upon a construction site as long as there is a valid building permit for the construction project.
- (c) All construction trailers shall be located off all street rights-of-way.

5.8.2 Certain uses of a temporary nature [i.e., less than 45 days in duration and held no more than three (3) times per year at any particular location] which would not otherwise be permitted in a particular zoning district may be issued a permit as herein provided. Upon completion and submittal of an application, the Zoning Administrator may grant a zoning permit for the following temporary uses:

- 1. Christmas tree sales
- 2. Revivals
- 3. Shows for civic and youth organizations (i.e., 4-H Shows)
- 4. Circuses, carnivals, fairs, and rodeos

The permit shall be valid for a specified period only, not to exceed forty-five (45) days in duration.

All other such temporary uses not otherwise listed may only be granted a zoning permit only after **(i)** a public hearing has been conducted by the Board of Adjustment, and **(ii)** the Board of Adjustment had made the following determinations:

- 1. The proposed use will not materially endanger the public, health, welfare and safety; and
- 2. The proposed use will not have a substantial negative effect on adjoining properties.

In approving such permit, the Board of Adjustment may authorize conditions regarding duration of the use, hours of operation, signage, lighting, etc. and such conditions shall be made part of the permit issued. Violations of such conditions shall be considered a violation of this Ordinance.

No temporary use authorized under Section 5.8.2 of this Ordinance shall involve the keeping or use of livestock within two hundred (200) feet of any residential structure.

5.8.3 In the event of a disaster, the result of which would require the rebuilding of a dwelling, the owner and his family may occupy a mobile home on the property. The permit granted by the Zoning Administrator, shall be for a six (6) month period and may be renewed once by the Zoning Administrator provided that construction has proceeded in a diligent manner.

5.8.4 Structures, whether temporary or permanent, located in a subdivision, and used as sales offices for the subdivision development are permitted provided their external appearance is similar to that of the homes for sale within said subdivision. There shall be no external storage of building materials on the site containing the sales office. Such permits shall be issued by the Zoning Administrator for a period of one (1) year, and are renewable for a period of time not to exceed one (1) year provided the development is being actively marketed. At the completion of the sales in a tract, the temporary structure(s) shall be removed, and any permanent structure(s), temporarily used as a sales office, shall be used only for a purpose otherwise permitted in that district. Any such structure shall be placed on the lot so as to comply with all required off-street parking and yard setbacks.

5.8.5 In any Residential (R) District a temporary Conditional Use Permit (CUP) may be granted by the Board of Adjustment for not more than one (1) manufactured home to be placed on a residential lot as an accessory use when conditions exists of the need to care for an immediate family member due to medical reasons. The CUP shall be granted only after the Board of Adjustment has made all of the following findings:

- (1) That the manufactured home is an accessory use to a principal residential use;
- (2) That the mobile home will be placed on the lot on a temporary basis;
- (3) That there exists a medically related need for the proximate care of an immediate family member (this finding must be substantiated by a certificate of need from a medical doctor and other evidence the Board of Adjustment may desire). [As used herein, proximate care shall mean the same level of care that would normally necessitate living in the same dwelling as the care provider or in a domiciliary care facility, such as care in the basic day-to-day living needs, (e.g., feeding, bathing, and other such functions)];
- (4) That the person(s) responsible for providing the care will live in either the principal dwelling or the manufactured home and that the person(s) needing the care shall live in the structure not occupied by the person(s)

providing the care;

- (5) That there exists sufficient reason(s) justifying separate quarters and such reasons shall be limited to either contagious disease, serious illness, or lack of adequate space within the principal dwelling;
- (6) That the person(s) in need of care is an immediate family member of the person(s) to be responsible for providing the care; immediate family member shall mean parent, grandparent, child, brother, sister;
- (7) That the manufactured home will have adequate access to public water and sewer or a well and septic tank as verified by permits from the Gaston County Health Department;
- (8) That the mobile home will be placed in the rear yard and will be no closer than twenty (20) feet from any property line or, if it is not feasible to locate the mobile home in the rear yard, that the mobile home will be located in the non-required side yard behind the building line of the principal dwelling and no closer than twenty (20) feet from the principal dwelling; and
- (9) That the manufactured home meets all criteria for Class B manufactured homes as set forth in Part 4 of this Ordinance;
- (10) That the granting of the CUP will not materially endanger the public health, safety, and welfare.

The following additional requirements shall be applicable:

- a. The CUP shall be valid for one (1) year after issuance or for a shorter period as specified by the Board of Adjustment, however, no such CUP shall be valid beyond thirty (30) days after any of the reason(s) justifying the CUP cease to exist.
- b. The CUP may be renewed prior to the expiration date with proper application to and approval by the Board of Adjustment when the hardship warranting the original permit remains and is verified.
- c. Such permit is granted to a particular owner on the basis of circumstances peculiar to that owner and it shall not remain in effect in the event of a change of ownership of any land structure, use, or other item covered by the CUP.
- d. When granting the CUP, the Board of Adjustment may impose reasonable conditions, restrictions, and safeguards as considered necessary to protect the public health, safety, and general welfare in accordance with the purpose and intent of this Ordinance. Violation of

these conditions, restrictions, and safeguards shall be considered a violation of this Ordinance.

Section 5.9 Height Calculations and Exceptions

5.9.1 The maximum heights as indicated in the various districts may be exceeded for the following uses:

Roof structures not intended for human occupancy, such as skylights, satellite dishes, housing for elevators, stairways, water tanks, ventilating fans, air conditioning equipment or similar equipment, steeples, spires, belfries, cupolas or chimneys, and radio and television antennae (excluding amateur radio antennae), whether ground or roof-mounted may also exceed the prescribed height of the underlying zoning district in which they are placed. The height of telecommunication Towers and Facilities shall be governed per Section 5.23.

5.9.2 Setbacks for Structures with Height Exceptions

Any structure which exceeds the prescribed maximum building for the zoning district in which it is located on the lot so that no portion of the structure is located closer to any lot more than the difference between the actual height of the structure and the normally allowed maximum building height in that zoning district.

Section 5.10 Reserved

Section 5.11 Accessory Structures

5.11.1 Within any Residential (R) District, accessory structures shall be located as follows:

- a. Except as herein provided, no portion of any accessory structure (except for **(i)** water wells on any lot and **(ii)** garages used primarily to house automobiles) shall be located within any front yard.
- b. Water wells may be located in any front, side or rear yard.
- c. Automobile garages designed to accommodate no greater than three (3) automobiles may be located in any front yard other than in the required front setback. Any such garage shall also observe the minimum dwelling side yard requirement for the zoning district in which it is located projected to the front property line.
- d. Accessory structures are allowed in any side yard, although none are allowed in any side setback except as provided in Section 5.11.1(b) of this Ordinance.

- e. Accessory structures are allowed in any rear yard provided that no accessory structure (except as provided in Section 5.11.1(b) of this Ordinance) shall be allowed within five (5) feet of any lot line in the rear yard line.
- f. Accessory structures associated with an agricultural use are allowed in the front yard so long as the lot in question is greater than five (5) acres in area and so long as the accessory structure has a front yard setback of at least one-hundred (100) feet. In no case shall such structure be located closer than fifteen (15) feet from any adjacent lot line. Accessory structures associated with an agricultural use shall also be in compliance with Section 7.1.1(4).
- g. A principal structure shall generally be located on the same lot containing the accessory structure. An exception may be made for agricultural uses and when a property owner owns two (2) or more adjoining lots each located on the same side of the street and on the same street block. In such instance, an accessory structure may be located on an adjoining lot that does not contain a principal structure. Except as otherwise may be allowed, the accessory structure shall lie to the rear of the principal structure.
- h. An accessory structure (e.g., garage or carport) that is connected to the principal structure via a covered breezeway, for size and setback purposes, shall be considered part of the principal structure.

5.11.2 Within any B-1, B-2, B-3, or GMC District, accessory structures shall be located as follows:

- a. Except as herein provided, no accessory structure shall be located in any required front or side setback. A water well may be located in any front, side or rear yard.
- b. Accessory structures are allowed within the rear principal building setback area provided that no accessory structure (except as provided in Section 5.11.2(b) of this Ordinance) shall be allowed within ten (10) feet of a rear yard line or within twenty (20) feet in the case of any rear yard line which abuts a Residential (R) District. Provided however, security guard stations are permitted in any yard but not closer than eight (8) feet to any public street right-of-way.

5.11.3 On any lot containing a principal residential use, no accessory structure shall be permitted that involves or requires any construction features that are not primarily residential in nature or character.

5.11.4 On any lot containing a principal residential use, the aggregate floor area of all accessory structures (excluding barns, farm-related structures, swimming pools,

tennis courts and satellite dish antennae) shall not exceed one-half (1/2) the heated ground floor area of the principal building (exclusive of decks and porches) nor exceed the height of the principal building, nor have more floors than the principal building. In no case, however, shall the accessory structure be greater than two (2) stories in height. All such lots, however, shall be allowed to have an accessory garage of no greater than five hundred (500) square feet provided that said garage (i) meets all required setbacks and (ii) is designed primarily to house automobiles.

Section 5.12 Exceptions to Required Yard and Setback Measurements

On any structure, the outermost four (4) feet of any step, handicap ramp, gutter, eave, HVAC equipment, or canopy that is physically constructed on or connected to the structure shall be excluded from the setback requirements contained in this Ordinance.

An attached and uncovered ground level (i.e., no greater than four feet in height) slab may extend into a required rear yard but shall be no closer to a rear lot line than one-half (1/2) of the required rear yard setback. Said slab may not be covered or enclosed in the future or otherwise be converted into heated floor space unless the full rear yard requirements for the structure are met.

Section 5.13 Reduction of Lot and Yard Areas Prohibited

No required yard or lot area existing at the time of adoption of this Ordinance or any amendment subsequent thereto shall be reduced in size below the minimum requirements set forth herein, except as the result of street widening or other takeage for public use or conveyance in lieu thereof or if a variance for such is issued by the Board of Adjustment.

Yards or lots created after the effective date of this Ordinance shall meet the minimum requirements established by this Ordinance. This prohibition shall not be construed to prevent the acquisition or condemnation of land for public purposes.

Section 5.14 Use of Manufactured Homes and Similar Structures

A manufactured home may only be used as a principal residential structure, except when serving as a manufactured home sales lot office, or pursuant to a temporary permit issued in accordance with either 5.8.3, 5.8.4, or 5.8.5 of this Ordinance.

Section 5.15 Uses Not Expressly Permitted or Conditional

No building or structure, sign or land shall hereafter be used, erected or occupied and no building or structure shall be erected, expanded or moved except in conformity with the regulations of this Ordinance. This Ordinance specifies uses that are allowed in each zone.

Uses designated as "permitted uses" are allowed in a zone as a matter of right. Uses designated as "conditional uses" are allowed only after approval by the City Council pursuant to Part 13 of the Ordinance. Accordingly, a large number of uses are listed as being permitted or conditional in the various zoning districts. Uses not specifically listed, but closely similar in nature and likely impact on surrounding properties, shall be treated as such similarly listed use, upon a determination being made by the Zoning Administrator.

Certain uses pre-dating the adoption of this Ordinance are allowed to remain as nonconforming uses in accordance with Part 8 of this Ordinance. Certain temporary uses may be allowed in accordance with Section 5.8 of this Ordinance.

Section 5.16 Location of Required Yards on Irregular Lots

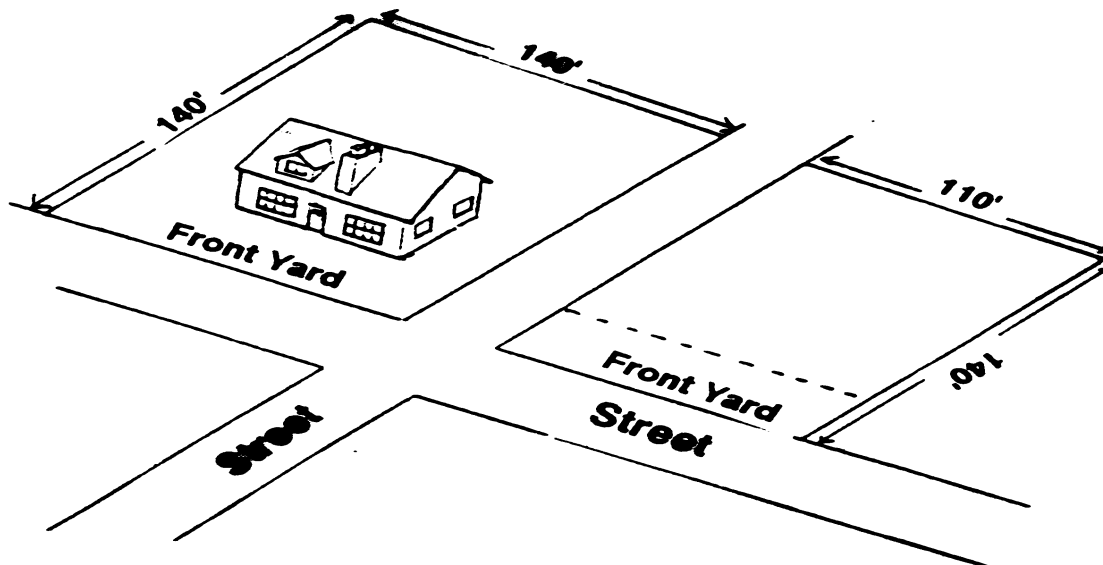
The location of required front, side and rear yards on irregularly shaped lots shall be determined by the Zoning Administrator. The determination will be based on the spirit and intent of this Ordinance to achieve an appropriate spacing and location of buildings and structures on individual lots.

5.16.1 Front Yards and Rear Yards on Corner Lots

On lots located on corners where each corner lot length exceeds two-hundred (200) feet, the property owner may use either lot length to compute the front yard. Otherwise, on all corner lots, the front yard shall be measured perpendicular from the street lot line having the shortest linear footage. If both street lot lines have equal linear footage and no principal structure is located on the lot, the property owner shall determine the location of the front yard. On lots having equal frontage and there is a principal structure located on such lot, the front yard shall be based on the architectural orientation of the house. Once the front yard is determined the rear yard shall be the yard opposite the front yard.

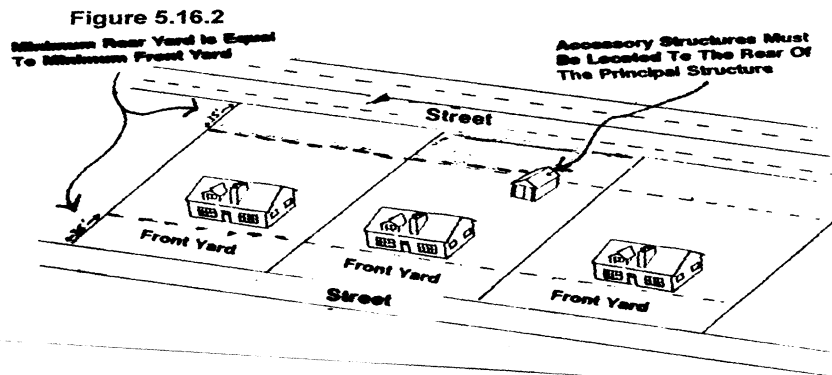
A graphic example of this is as follows:

Figure 5.16.1



5.16.2 Front Yards and Rear Yards on Through Lots

On through lots, the required front and rear yards shall each equal or exceed the greater of either the required front or rear yard setback which would normally be applied in that zoning district. For example, if a through lot were located in a zoning district which normally required a thirty-five (35) foot front setback and a twenty-five (25) foot rear setback, both front and rear setbacks would have to equal or exceed thirty-five (35) feet. For the purpose of placing accessory structures, however, the rear yard shall be deemed to be the yard opposite the street side yard that the architectural front of the building faces. For the purpose of placing a principal residence, the Zoning Administrator shall require the architectural front of the building to be oriented similar to residences on either side. A graphic example of this is as follows:



Section 5.17 Vibration

No established use in any district may be operated in such a fashion that any inherent or recurring ground vibrations can be felt or detected at the property line without the use of instruments.

Section 5.17A Outdoor Lighting

Outdoor lighting on non-residentially zoned lots shall be located so as not to project onto adjoining properties nor endanger motorists traveling on adjacent streets.

Section 5.18 Noise

Every use of land initiated enlarged or changed after the effective date of this Ordinance shall be operated in such a way that regularly recurring noises are not disturbing or unreasonably loud and do not cause injury, detriment, or nuisance to any person of ordinary sensitivities. Every use in a B-1, B-2, B-3, or GMC District must be operated in such a way that any noise which may be detected by the human senses without instruments at the district boundary line separating that district from a Residential (R) District is no louder than the noise which could normally be expected from uses allowed in that Residential (R) District.

Section 5.19 Odor

Every use of land shall be operated in such a way that regularly recurring odors are not disturbing and do not cause injury, detriment or nuisance to any person of ordinary sensitivities. Every use in a B-1, B-2, B-3, or GMC District must be operated in such a way that any odor which may be detected at the district boundary line separating that district from a Residential (R) District is similar in character to odors which could be expected to be generated from uses allowed in

that Residential (R) District. This provision shall not apply to any publicly operated wastewater treatment plant.

Section 5.20 Yard Requirements Not Applicable to Essential Services, Class 1

No yard requirements as set forth in Part 7 of this Ordinance are applicable to Essential Services, Class 1. There are no yard requirements for Essential Services, Class 1.

Section 5.21 Subdivision in Excess of Twenty (20) Lots

Any subdivision in excess of twenty (20) lots shall automatically be considered to be a conditional use subject to the approval of the Cherryville City Council in accordance with Part 13 of this Ordinance. This number shall be calculated on the aggregate number of lots contained in all phases of the subdivision.

Section 5.22 Adult Oriented Businesses

Adult oriented businesses (refer to their definition found in Section 4.2), because of their very nature, are recognized as having serious objectionable operational characteristics upon adjacent neighborhoods and residential and institutional uses. It has been demonstrated that the establishment of adult oriented businesses often creates problems for law enforcement agencies by the very nature of these businesses, and by the difficulty often experienced in trying to determine if the operations are of a legal nature. Special regulation of these establishments is necessary to insure that these adverse affects will not contribute to a de facto downgrading or blighting of surrounding neighborhoods and uses.

Any adult oriented business within the planning jurisdiction of the City of Cherryville shall be subject to the issuance of a conditional use permit by the Cherryville City Council. No conditional use permit shall be issued for any such use unless the City Council makes a positive determination on each of the findings of fact associated with a conditional use permit found in Section 13.4.2. In addition, any adult oriented business shall be in compliance with all the performance criteria pertaining to such establishments contained in Section 7.12.2(S).

Section 5.23 Telecommunication Towers and Facilities

- 5.23.1 In recognition of the Telecommunications Act of 1996, it is the intent of the City of Cherryville to allow communication providers the opportunity to locate towers and related facilities within its jurisdiction in order to provide an adequate level of service to its customers while protecting the health, safety, and welfare of the citizens of Cherryville. Wireless towers may be considered undesirable with other types of uses, most notably residential, special regulations are necessary to ensure that any adverse affects to existing and future development are

mitigated.

- 5.23.2 Wireless telecommunication towers, (including cellular towers, digital towers, and PCS towers), are permitted uses by right in the GMC district pursuant to the regulations set forth in this section. Telecommunication towers require the issuance of a Conditional Use Permit in all other zoning districts pursuant to the regulation set forth in this section and subject to the requirements in Part 13.
- 5.23.3 All telecommunication towers shall be of a monopole design and construction. All monopole towers shall be designed to “telescope” or collapse inward unless documentation can be provided to prove that such design is not feasible.
- 5.23.4 It is the intent of the City to encourage providers to co-locate facilities in an effort to reduce the number of towers in Cherryville's planning jurisdiction. The City shall require providers to negotiate in good faith with other providers to lease space at a reasonable lease cost, and publicize the fact that space is available on a lease basis. Any newly erected tower (or tower that is raised in height) that is one-hundred (100) feet in height or greater must be designed and equipped with the technological and structural capability to accommodate at least three wireless communication carriers.
- 5.23.5 The City of Cherryville is concerned about the external appearance of towers. Any tower that has a height of greater than one-hundred (100) feet that is not co-located with another existing facility, shall be of a “stealth” appearance (i.e., housed in a structure or building such as a church steeple or bell towers or disguised to look like something else (i.e., flagpoles, pine trees, etc.) or shall be attached to an electric power transmission facility.
- 5.23.6 The maximum height of telecommunication towers shall be 199.9 feet. No variance to the height may be granted unless the applicant can prove that the maximum height will not allow for the provision of adequate service levels (i.e., cannot provide a reasonable level of service in the area.)
- 5.23.7 Where a telecommunication tower is located on a lot with an existing principal use, the tower shall be located in the rear yard only. In addition, an access road at least twelve (12) feet wide shall be maintained by the property owner and/or the applicant from a public street to the tower for use by service and emergency vehicles.
- 5.23.8 The City of Cherryville, by federal law, cannot prohibit a telecommunication tower nor deny a Conditional Use permit on the basis of environmental or health concerns relating to radio emissions if the tower complies with the Federal Radio Frequency Emission Standards. The City requires that the provider must provide documentation proving that the proposed tower does comply with the Federal Radio Frequency Emission Standards.
- 5.23.9 Wherever feasible, all accessory structures on the ground which contain

switching equipment or other related equipment must be designed to closely resemble the surrounding neighborhood's basic architecture, or the architecture and style of the principal use on the property.

- 5.23.10 Screening is required along all sides of the perimeter of the tower site in the form of a year-round opaque screen that meets or exceeds the standards contained in Section 5.2.3. In addition, a minimum eight-foot high fence shall be placed immediately around the base of the tower and any equipment buildings associated with the tower. It will be the responsibility of the provider to keep all landscaping material free from disease and properly maintained in order to fulfill the purpose for which it was established. The owners of the property, and any tenant on the property where screening is required, shall be jointly and severally responsible for the maintenance of all screen materials. Such maintenance shall include all actions necessary to keep the screened area free of litter and debris, to keep plantings healthy, and to keep planting areas neat in appearance. Any vegetation that constitutes part of the screening shall be replaced in the event it dies. Any screening that is placed along the periphery of a new tower site shall be done in such manner so as to accommodate any future providers at that site.
- 5.23.11 Telecommunication towers can be denied on the basis of negative influence on property values or on aesthetic concerns provided that there is evidence to prove the impact on adjacent property owners will be significant. Elected officials must clearly state the reasoning and available evidence of the impact on adjacent property values if the request is denied on this basis.
- 5.23.12 A minimum setback requirement, on all sides of the property, or leased area of a parcel, shall be one and one-half (1.5) feet for every one (1) foot of actual tower height (i.e. a 180 foot tower would require a 270 foot setback on all sides), or the documented collapse zone, whichever is greater. For the purpose of establishing-setbacks, the measurements shall be from the perimeter fencing which surrounds the equipment shelters, and tower base. No habitable structures shall be within the required setback area. Minimum setback requirements may be reduced by the Town, as part of the conditional use process, if warranted and if documented by the applicant that such reduction will not materially endanger the public's health, welfare, and safety.
- 5.23.13 Towers having a height of 199.9 feet or less shall not contain lights or light fixtures at a height exceeding fifteen (15) feet. Furthermore, lighting of all towers in any district shall be directed toward the tower and/or accessory uses to reduce glare onto adjacent properties.
- 5.23.14 Towers and related facilities must be removed if abandoned (e.g., no longer used for its original intent) for a period greater than six (6) consecutive months. The cost of such removal shall be borne entirely by the telecommunication provider and/or the property owner. Failure to do so shall be deemed a violation

of this ordinance.

- 5.23.15 A planned increase in tower height to an existing telecommunication tower shall require that the provider apply for a new conditional use permit. Co-location of a new provider that does not increase the height of the tower may be approved by the Zoning Administrator, without additional review by the Planning Board or City Council.
- 5.23.16 On-site freestanding signs associated with the tower shall generally be prohibited except for “warning”, “keep out” and signs containing similar non-commercial messages. One wall sign, for the purpose of identification, is allowed on any equipment shelter provided the area of said sign shall be as allowed for other non-residential type uses within the applicable zoning district.
- 5.23.17 The provider must show proof of adequate insurance coverage for any potential damage caused by or to the telecommunication tower prior to the issuance of a conditional use permit.
- 5.23.18 Outdoor storage of equipment or related items at the site shall not be allowed.
- 5.23.19 Outdoor storage of equipment or other related items is prohibited on a telecommunication tower site.
- 5.23.20 All applications for a Conditional Use permit for a telecommunication tower must include the following information in addition to any other applicable information contained in Section 13.3 of the Zoning Ordinance:
- a. Identification of intended provider(s)
 - a. Documentation by a registered engineer that the tower has sufficient structural integrity to accommodate more than one user, if applicable.
 - c. A statement from the owner indicating intent to allow shared use of the tower and how others will be accommodated, if applicable.
 - d. Evidence that the property owners of property located in a residential (R) zoning district that lie within 300 feet of the site have been notified by the applicant of the proposed tower height and design.
 - e. Documentation that the telecommunications tower complies with the Federal Radio Frequency Emission Standards.
 - f. Documentation that a tower over 199.9 feet (if applicable) is necessary for a minimal level of service.
 - g. The type of screening shall be shown on the site plan detailing the type, amount of plantings, and location.
 - h. Documentation of collapse area, if applicable.
 - i. A statement regarding possible interference, if any, with respect to radio and/or television reception.
 - j. Documentation that the provider has explored all means for stealth tower locations and co-location opportunities shall accompany requests for new tower sites.

Section 5.24 Sales of merchandise generally

It shall be unlawful for any person to establish a location upon any public street, sidewalk, right-of-way, plaza, park or city-owned or leased property for any period of time, or use such property or any part thereof as a location for or as a place of business for selling or offering for sale products or merchandise of any kind, except as otherwise provided in this Code.

However, a business may display merchandise upon the public sidewalks immediately adjoining the front or primary entrance of such proprietor's permanent place or places of business within the City of Cherryville's Zoning jurisdiction. The sidewalk area so utilized shall not obstruct the free and reasonable use of the sidewalk in front of such establishment. An area of at least five (5) feet as measured from the curb of the street, the base of a street light pole, or City tree toward the establishment should be kept clear of merchandise so as to leave the sidewalk fully accessible to allow for pedestrian and handicap movement along such sidewalk. (Adopted at a regular City Council meeting 6-05-06)

Section 5.25 Limitations on outdoor display and storage of merchandise

It is the intent of this ordinance to allow the limited display and storage of merchandise, but not where the display and/or storage of such items impedes the flow of pedestrian or vehicular traffic, or creates an unsafe condition. The display and storage of merchandise shall meet the following conditions:

- (a) All outdoor display of goods shall be located immediately adjacent to the storefront and not in drive aisles, loading zones, fire lanes or parking lots.
- (b) At least five (5) feet along the parking lot side of the display shall be maintained free of obstruction to allow for pedestrian and handicap movement, such that pedestrians and handicap pedestrians do not have to enter the parking lot, loading zone or drive aisle or walk around the display and storage area.

(Adopted at a regular City Council meeting 6-05-06)

PART 6

ZONING DISTRICTS

Section 6.1 Introduction

In order to achieve the purpose of this Ordinance, the following districts, based on the concepts and proposals of the City of Cherryville Land Use Plan and other plans and policies are hereby established. In addition to the primary uses which are permitted by right or through the issuance of a conditional use permit, other uses including accessory uses, off-street parking and signs are permitted as listed in this Ordinance. The districts are divided into three different categories: **(1)** General Zoning Districts, **(2)** Overlay Districts and **(3)** Parallel Conditional Use Districts.

Section 6.2 General Zoning Districts

General Zoning Districts are designated throughout the zoning jurisdiction and include numerous uses which are allowed by right subject to those uses meeting yard, height, parking, screening, etc. regulations. In addition, each zone allows for conditional uses that may be developed once a conditional use permit has been issued by the City Council. The following general zoning districts are hereby established.

6.2.1 R-40 Rural Residential District

This district is intended to accommodate low-density residential and agricultural uses in fringe areas of the zoning jurisdiction which generally are non-intensely developed. This district is established to accommodate low density development where public utilities are non-existent or partially existent, and to accommodate greater densities where services are present, therefore, density levels are variable to the existence of such facilities. The continuance of agricultural operations is encouraged within this district. Under certain circumstances certain conditional uses may be allowed depending upon facilities to support such uses, compatibility with existing and proposed surrounding development, and other criteria set forth in this Ordinance.

6.2.2 R-15 Single-Family Residential District

This district is established to provide areas consisting primarily of larger-lot single-family residences located in both urban and suburban settings where public water and sewer are either present or readily available. Permitted residential uses consist solely of single-family residences and the minimum lot size shall be 15,000 square feet. In addition to single-family residences, a limited number of private and public community uses are allowed, on either a permitted by right basis or on a conditional use basis where certain criteria specified in this Ordinance are met.

Certain single family detached planned residential developments are allowed on a conditional basis.

6.2.3 R-12 Residential District

This district is established to provide primarily for single-family residences. The minimum lot size for single-family dwellings on a use by right basis is established at 12,000 square feet. Unlike the R-15 district, public water and sewer are available in all R-12 zoned areas. Two-family dwellings are also permitted. Certain public and private community facilities are also allowed or may be allowed on a conditional basis. Certain cluster type residential planned developments may be allowed on a conditional basis.

6.2.4 R-9 Residential District

This district is established to accommodate single-family dwellings on 9,000 minimum square foot lots and two-family dwellings on 12,000 minimum square foot lots and to allow under certain conditions, and after review and approval by the City Council, a variety of residential dwelling unit arrangements in Planned Residential Developments. R-9 districts are located in older, established areas of the City where mixtures of single and two-family dwellings can be accommodated. Like the R-12 District, public water and sewer service is present in all R-9 areas. Review by the Planning Board, and review and approval by the City Council for the residential uses and arrangements, other than those specifically permitted by right, is established to ensure that developments are well-planned and, where applicable, compatible with adjoining single-family residences and neighborhoods. A limited number of private and public community uses are allowed or may be allowed on a conditional use basis where certain criteria specified in this Ordinance are met. Accessory residences are also allowed on a conditional basis.

6.2.5 Reserved

6.2.6 RMF Residential Multi-Family District

This district is intended primarily as a residential district for the location of detached single-family dwellings, two-family dwellings and multi-family dwellings along with their customary accessory uses so as to establish areas where development patterns are somewhat denser than surrounding areas. In order to ensure that developments are well planned and compatible with adjoining residential areas multi-family projects with a density greater than six (6) units per acre shall be a conditional use subject to review procedures set forth in Part 13 of this Ordinance. A limited number of private and public community uses are allowed or may be allowed on a conditional use basis whereby certain criteria specified in this Ordinance are met.

6.2.7 RO Residential Office District

This district allows for one, two, and multi-family residential uses and certain commercial, office and institutional uses which would create an area convenient for both residential and employment purposes. In certain areas this district is also established to provide a transition between purely residential areas and primarily commercial areas. In order to enhance the district's residential character, the R-O District for purposes of this Ordinance will be considered a "Residential" District. Such a classification does require screening from all new uses in adjacent commercial and industrial districts. Small offices, certain community facilities and one and two-family residences are permitted by right. Larger offices, multi-family dwellings, other community facilities, and certain businesses are allowed only on a conditional use basis. Planned residential developments are a conditional use allowed on the same basis as in the R-9 District.

6.2.8 B-1 Central Business District

The purpose of this district is to permit concentrated development of a wide variety of retail establishments, personal services and professional and non-professional offices. In addition, certain industrial and residential uses may be developed with City Council approval. In light of the concentrated amount of development normally found in a "downtown" area, yard regulations are minimal. Given the lack of space for off-street parking, this requirement has also been eliminated. In order to limit visual clutter, the outdoor storage of goods is prohibited.

6.2.9 B-2 Neighborhood Business District

This district is designed primarily for local business centers for retailing of merchandise such as groceries, drugs, and household items and for furnishing certain personal, business and professional services. Unlike some of the other commercial zones, this district is established to serve local neighborhoods and other relatively small trading areas. The standards established for these business areas are designed to promote sound, permanent business development and also to protect abutting or surrounding residential areas from undesirable aspects of nearby business development. These districts are located at accessible places with respect to traffic circulation in order to conveniently serve the trading population and to promote the grouping of several places of business at locations so designated. Since this district is established to provide for small neighborhood oriented businesses, limitations on gross floor areas are established for certain uses. Neighborhood business district is typically a relatively small are but shall consist of at least two (2) lots in separate ownership or at least two (2) acres regardless of ownership. Unlike the B-1 District, off-street parking, landscaping, and yard requirements are established for the B-2 District. However, outdoor storage of all goods is prohibited.

6.2.10 B-3 General Business

The purpose of this district is to provide an array of retail, wholesale and service uses to serve the entire community and with access to such uses being primarily by automobile. The districts are located along major arterial and collector streets and adjacent to the central business district in order to have a minimal effect on residential neighborhoods.

6.2.11 Reserved

6.2.12 GMC General Manufacturing and Commercial

This district is designed primarily for general commercial and industrial land uses, including manufacturing, processing and assembling of parts and products, distribution of products at wholesale, retail, transportation terminals and a broad variety of specialized commercial and industrial operations. Many types of such operations are permitted by right, however, certain types of manufacturing and commercial operations will be allowed only upon issuance of a conditional use permit after review by the Planning Board and City Council and the City Council having made certain findings and having determined any required conditions as set forth in Part 13.

Section 6.3 Overlay Districts

Overlay Districts are established to provide for certain additional requirements and/or uses for properties located in one or more general zoning districts. Thus, in addition to the requirements of the underlying general zoning district, the provisions of the Overlay District would also prevail in the areas so zoned. The initial zoning of areas to an Overlay District and/or any subsequent rezonings may be initiated by an individual, Planning Board or City Council. A zoning map change either establishing or changing any Overlay District shall be subject to the same procedures and requirements as any other zoning map change.

6.3.1 MHO Manufactured Home Overlay

The purpose of this district is to provide areas in which Class A manufactured homes can be located on individual lots. In order that such homes, when placed on the lot, are compatible with single-family residences, the MH District does provide certain size, construction and aesthetic standards for manufactured homes by allowing only Class A manufactured homes. The MH Overlay District may only be located in areas that contain a Residential (R) underlying general zoning district. Such overlay areas may not consist of an individual lot or scattered lots, but shall consist of a defined area within which additional requirements or standards are placed upon manufactured homes. The intent of this approach is to allow manufactured homes in parts of a zoning district where they would not otherwise be allowed, subject to appropriate conditions. In determining such areas, the City

Council will give close consideration to whether manufactured homes would be compatible with surrounding land uses.

6.3.2 WSW Water Supply Watershed Overlay (RESERVED)

Section 6.4 CU Parallel Conditional Use Districts

Parallel Conditional Use Districts are established to consider situations where a particular use may be acceptable on a piece of property but the other uses permitted in a General Zoning District would not be acceptable. In such instances, the City Council may elect to rezone the lot(s) in question to a parallel conditional use district. Such rezonings may be made contingent upon the property owner meeting fair and reasonable conditions which assure the compatibility of the use with surrounding properties and promote the general welfare of the community. Zoning to a CU District shall be a voluntary procedure on the part of the property owner or his agent and is intended for firm development proposals. It is not intended for securing early zoning for tentative proposals.

The following CU Districts are hereby established:

CU	R-40	CU	B-1
CU	R-15	CU	B-2
CU	R-12	CU	B-3
CU	R-9	CU	GMC
CU	RMF		
CU	RO		

PART 7

ZONING DISTRICT REGULATIONS

Section 7.1 R-40 Rural Residential District

7.1.1 Permitted Uses:

1. Single-family dwellings [provided that any residential subdivision in excess of twenty (20) lots shall be subject to the issuance of a conditional use permit. This computation shall be based on the aggregate number of lots in all phases of the subdivision.]
2. Two-family dwellings.
3. Manufactured homes, Class A.
4. Agricultural uses, provided that structures housing poultry or livestock and waste removed from any such structure shall be located no closer than one-hundred (100) feet from any lot line and two-hundred (200) feet from any principal residential structure on another lot.
5. Family care homes for up to six (6) clients.
6. Day care centers, small group.
7. Customary home occupations in accordance with Section 5.1 of this Ordinance.
8. Essential Services, Class 1.
9. Churches with a maximum seating capacity of not greater than four hundred (400) seats. Customary accessory uses shall also be permitted. Church owned and maintained cemeteries as an accessory use are permitted. (also see "conditional uses" below for additional information on churches.)
10. Publicly owned and operated outdoor recreation facilities which are one (1) acre or less in area. No such facility shall contain a swimming pool or indoor community center or meeting facility or stadium.
11. Private recreation facilities constructed pursuant to a permit authorizing the construction of some residential development and intended primarily for the use and enjoyment of the residents thereof.

12. Public and private elementary and secondary schools. Stadiums associated with any school shall be a conditional use.
13. Stands for the in-season sale of produce out of a home garden located on the premises where the produce is being sold.
14. Accessory structures in accordance with Section 5.11 of this Ordinance.
15. Signs in accordance with Part 9 of this Ordinance.
16. Off-street parking in accordance with Part 10 of this Ordinance.
17. Private residential quarters.
18. Rest homes, nursing care facilities, and continuing care communities.
19. Amateur Radio Towers, twenty (20) feet in height or less

7.1.2 Conditional Uses:

The following uses may be permitted after a conditional use permit has been issued by the City Council in accordance with Part 13 of this Ordinance.

1. Cemeteries as a principal use. (Setback applies to both buildings and graves).
2. Customary Home Occupations which meet all the criteria as set forth in Section 5.1 of this Ordinance except 5.1.2 of said section, provided however, if an accessory or outside storage building is used in connection with a home occupation it shall not exceed 800 square feet in floor area and not more than one (1) such building shall be devoted to the home occupation and said building shall be located in the rear yard not less than fifty (50) feet from any property line.
3. Auto hobbyist.
4. Churches having a seating capacity in excess of four hundred (400) seats. Day care centers or schools located within any church.
5. Country clubs and privately-owned outdoor recreation facilities provided that go-cart tracks and outdoor vehicular racing facilities shall not be permitted.
6. Publicly owned and operated outdoor recreation facilities in excess of one (1) acre in area and/or containing a swimming pool, indoor community center or meeting facility, or stadium.

7. Bed and breakfast inns.
8. Public safety stations.
9. Essential Services, Class 2 and Class 3.
10. Planned Residential Developments in accordance with Part 11 of this Ordinance when public or community water and public or community sewer will be provided to the development and provided the gross density of the development does not exceed six (6) dwelling units per acre or in the case of a density bonus granted pursuant to Section 11.3.1 of this Ordinance a total gross density of not more than eight and four-tenths (8.4) dwelling units per acre.
11. Planned Unit Developments (Mixed Use) in accordance with Section 11.2 of this Ordinance and provided the uses within the development are otherwise listed as permitted or conditional uses allowed in the R-25 District.
12. Manufactured Home Parks in accordance with Part 12 of this Ordinance.
13. Amateur Radio Towers, in excess of twenty (20) feet in height.
14. Campgrounds
15. Telecommunication Towers and Facilities
16. Any residential subdivision containing twenty (20) or more lots. This computation shall be based on the aggregate number of lots in all phases of the subdivision.

7.1.3 Yard Regulations:

1. Minimum Lot Size
 - a. Single-family dwellings and Class A Manufactured Homes- forty-thousand (40,000) square feet
 - b. Two-family dwellings- forty-thousand (40,000) square feet
 - c. Churches - two (2) acres
 - d. Schools - five (5) acres
 - e. Bed and breakfast inn - one (1) acre
 - f. Essential Services - none

- g. Manufactured home parks - three (3) acres
 - h. Planned residential development - five (5) acres
 - i. Cemeteries as a principle use - three (3) acres
 - j. Rest homes - one (1) acre
 - K. Nursing care facilities - sixty thousand (60,000) square feet
 - l. Continuing care communities - five (5) acres
 - m. Country clubs - five (5) acres
 - n. Campgrounds- twenty (20) acres
 - o. Amateur Radio Towers- none
 - p. All other principal uses – forty- thousand (40,000) square feet
2. Minimum Front Yard Setback (As measured from the edge of the street right-of-way line)
- a. Amateur Radio Towers, greater than twenty (20) feet in height- Minimum front yard setback one hundred (100) feet.
 - b. Agricultural Uses, forty (40) feet except as prescribed in Section 7.1.1 (4) and as also allowed in Section 5.11.1(f).
 - c. All other uses - forty (40) feet
3. Minimum Side Yard Setback (An additional ten (10) feet shall be provided on all side yards which abut a public street)
- a. Single-family and two-family dwellings and manufactured homes, Class A - fifteen (15) feet
 - b. Schools - forty (40) feet
 - c. Manufactured home park - fifty (50) feet as measured from the manufactured home park property line to the nearest manufactured home space. Required buffer area may be included in setback
 - d. Bed and breakfast inns - twenty-five (25) feet
 - e. Public safety stations - fifteen (15) feet

- f. Structures within planned residential developments - thirty (30) feet
 - g. Essential Services, Class II - twenty (20) feet
 - h. Essential Services, Class III - fifty (50) feet
 - i. Church - forty (40) feet
 - j. Rest home, nursing care facility, and continuing care communities - forty (40) feet
 - k. Swimming pools located in a public or privately maintained recreation facility - forty (40) feet
 - l. Community center or meeting facility - forty (40) feet
 - m. Amateur Radio Towers greater than twenty (20) feet in height- Minimum side yard setback of at least 1.5 times the height of the tower.
 - n. Telecommunication Towers and Facilities- See Section 5.23
 - o. Campgrounds- One-hundred (100) feet
 - p. Agricultural Uses, fifteen (15) feet, except as prescribed in Section 7.1.1(4).
 - q. All other uses - fifteen (15) feet
4. Minimum Rear Yard Setback
- a. Manufactured home park - same as side yard requirement
 - b. Essential Services, Class 3 - fifty (50) feet
 - c. Amateur Radio Towers greater than twenty (20) feet in height- Minimum rear yard setback of at least 1.5 times the height of the tower
 - d. Campgrounds- One-hundred (100) feet
 - e. Agricultural Uses, thirty (30) feet, except as prescribed in Section 7.1.1(4).
 - f. Telecommunication Towers and Facilities- See Section 5.23

- g. Campgrounds- One-hundred (100) feet
 - h. All other uses - thirty (30) feet
5. Maximum Building Height
- a. Amateur Radio Towers- A maximum height of fifty (50) feet.
 - b. All other uses - thirty-five (35) feet, except as provided in Section 5.9 and 5.23 of this Ordinance
6. Minimum Lot Width (as measured at the minimum required front setback)
- a. Churches, community centers, meeting facilities, schools, country clubs, bed and breakfast inns and Essential Services, Class III - one hundred-fifty (150) feet
 - b. Manufactured home parks - one hundred-fifty (150) feet, except that a portion of the site containing no manufacturing home spaces and used to provide access to the park from a public street may be as narrow as fifty (50) feet
 - c. All other uses – one-hundred (100) feet

7.1.4 Screening

Screening, as provided in Section 5.2 of this Ordinance, shall be required for the following uses and for all other circumstances required by 5.2.1 of this Ordinance.

- a. Essential Services, Classes 2 and 3
- b. Country clubs except golf course playing areas
- c. Outdoor swimming pools located in a public or privately maintained recreation facility
- d. Manufactured home parks
- e. Planned residential developments (See Section 11.1)
- f. Churches
- g. Community centers and meeting facilities
- h. Bed and breakfast inns
- i. Public safety stations

- j. Rest homes, nursing care facilities and continuing care communities
- k. Schools - elementary or secondary / public or private
- l. Public or private outdoor recreation facilities not constructed pursuant to a permit authorizing the construction of some residential development
- m. Campgrounds

Section 7.2 R-15 Single-Family Low Density Residential District

7.2.1 Permitted Uses:

- 1. Single-family dwellings (provided that any residential subdivision in excess of twenty (20) lots shall be subject to the issuance of a conditional use permit. This computation shall be based on the aggregate number of lots in all phases of the subdivision.)
- 2. Day care centers, small group
- 3. Customary home occupations in accordance with Section 5.1 of this Ordinance
- 4. Family care homes for up to six (6) clients
- 5. Essential Services, Class 1
- 6. Accessory structures in accordance with Section 5.11 of this Ordinance
- 7. Signs in accordance with Part 9 of this Ordinance
- 8. Off-street parking in accordance with Part 10 of this Ordinance
- 9. Publicly owned and operated outdoor recreation facilities less than one (1) acre in size which do not contain a swimming pool or stadium.
- 10. Amateur Radio Towers, twenty (20) feet or less in height.

7.2.2 Conditional Uses:

The following uses may be permitted after a conditional use permit has been issued by the City Council in accordance with Part 13 of this Ordinance.

- 1. Cemeteries (setbacks apply to both graves and buildings)
- 2. Churches, including day care centers or schools located within any church.

3. Schools
4. Country clubs and privately-owned outdoor recreation facilities provided that go-cart tracks and other outdoor vehicular racing facilities shall not be permitted
5. Publicly owned and operated outdoor recreation facilities in excess of one (1) acre in area and/or containing a swimming pool or stadium.
6. Indoor community center or meeting facility
7. Essential Services, Class 2
8. Public safety stations
9. Planned Residential Developments in accordance with Part 11 of this Ordinance provided the gross density of the development does not exceed two and three tenths (2.3) dwelling units per acre or in the case of a density bonus granted pursuant to Section 11.3.1 of this Ordinance a total gross density of not more than three and twenty-two hundredths (3.22) dwelling units per acre.
10. Amateur Radio Towers greater than twenty (20) feet in height.
11. Telecommunication Towers and Facilities
12. Any residential subdivision containing twenty (20) or more lots. This computation shall be based on the aggregate number of lots in all phases of the subdivision.

7.2.3 Yard Regulations:

1. Minimum Lot Size
 - a. Single-family dwellings - fifteen thousand (15,000) square feet
 - b. Churches - one (1) acre
 - c. Country clubs - five (5) acres
 - d. Public or private outdoor recreation facilities not constructed pursuant to a permit authorizing the construction of a school or some residential development - none
 - e. Public and private elementary and secondary schools - four (4) acres

- f. Essential Services - none
 - g. Cemeteries as a principal use - two (2) acres
 - h. Public safety station - twenty thousand (20,000) square feet
 - i. Amateur radio towers- none
 - j. All other principal uses - fifteen thousand (15,000) square feet
2. Minimum Front Yard Setback (As measured from the edge of the street right-of-way line)
- a. All principal uses listed as permitted uses in 7.2.1 of this Ordinance - thirty-five (35) feet
 - b. Cemeteries and Essential Services, Class 2 - thirty-five (35) feet
 - c. Amateur Radio Towers greater than twenty (20) feet in height- Minimum front yard setback of at least 1.5 times the height of the tower.
 - d. All other uses - fifty (50) feet
3. Minimum Side Yard Setback (An additional ten (10) feet shall be provided on all side yards which abut a public street)
- a. Single-family detached dwellings - fifteen (15) feet
 - b. Public and private elementary and secondary schools - forty (40) feet
 - c. Church - forty (40) feet
 - d. Swimming pools located in a public or private maintained recreation facility - forty (40) feet
 - e. Country clubs, but not including golf courses - forty (40) feet
 - f. Community center or meeting facility - forty (40) feet
 - g. Amateur Radio Towers greater than twenty (20) feet in height- Minimum side yard setback of at least 1.5 times the height of the tower
 - h. Telecommunication Towers and Facilities- See Section 5.23

- i. All other uses - fifteen (15) feet
- 4. Minimum Rear Yard Setbacks
 - a. Amateur Radio Towers greater than twenty (20) feet in height- Minimum rear yard setback of at least 1.5 times the height of the tower
 - b. Telecommunication Towers and Facilities- See Section 5.23
 - c. All other uses - twenty-five (25) feet or same as minimum side yard setback, whichever is greater
- 5. Maximum Building Height
 - a. Amateur Radio Towers- Fifty (50) feet
 - b. Telecommunication Towers and Facilities- See Section 5.23
 - c. All other uses - thirty-five (35) feet, except as provided in Section 5.9 of this Ordinance
- 6. Minimum Lot Width (as measured at the minimum required front yard setback)
 - a. Churches, community center, meeting facilities, schools, country clubs, and essential services Class III. One hundred-twenty (120) feet except that in no instance shall the lot width measured at the street right-of-way be less than fifty (50) feet
 - b. All other uses - ninety (90) feet except that in no instance shall the lot width measured at the street right-of-way be less than thirty-five (35) feet

7.2.4 Screening:

Screening, as provided in Section 5.2 of this Ordinance, shall be required for the following uses:

- a. Essential Services, Class 2
- b. Country clubs except golf course playing areas
- c. Outdoor swimming pools located in a public or privately maintained recreation facility

- d. Schools, elementary or secondary, public or private
- e. Churches
- f. Community centers and meeting facilities
- g. Public or private outdoor recreation facilities not constructed pursuant to a permit authorizing the construction of some residential development

Section 7.3 R-12 Single-Family Medium Density Residential District

7.3.1 Permitted Uses:

- 1. All permitted uses allowed in the R-15 Single-Family District
- 2. Two-family dwellings

7.3.2 Conditional Uses:

- 1. All conditional uses listed in Section 7.2.2 of this Ordinance
- 2. Planned residential development in accordance with Section 11 of this Ordinance and provided the dwelling unit types are limited to single-family dwellings on standard lots; other single-family dwellings including lot line houses, village houses, and patio houses; and duplexes and twin houses and provided the gross density of the development does not exceed three (3) dwelling units per acre or in the case of a density bonus granted pursuant to Section 11.1.3 of this Ordinance a total gross density of not more than three and five tenths (3.5) dwelling units per acre.

7.3.3 Yard Regulations:

- 1. Minimum Lot Size
 - a. Single-family dwellings - twelve thousand (12,000) square feet, except as provided in Section 7.3.2(2) of this Ordinance
 - b. Two-family dwellings - eighteen thousand (18,000) square feet
 - c. Churches - thirty thousand (30,000) square feet
 - d. Schools, elementary and secondary / public and private - two (2) acres
 - e. Essential Services - none
 - f. Public safety stations - twenty thousand (20,000) square feet

- g. Amateur Radio Towers- None
 - h. All other principal uses - one (1) acre
- 2. Minimum Front Yard Setback (As measured from the edge of the street right-of-way line)

All uses - same as R-15
- 3. Minimum Side Yards Setback (An additional ten (10) feet shall be provided on all side yards which abut a public street)
 - a. Single and two-family dwelling - ten (10) feet
 - b. Planned residential developments - See Section 11.1.2.(f) of this Ordinance
 - c. All other uses - same as R-15
- 4. Minimum Rear Yard Setbacks
 - a. Amateur Radio Towers greater than twenty (20) feet in height- A minimum rear yard setback of at least 1.5 times the height of the tower.
 - b. Telecommunication Towers and Facilities- See Section 5.23
 - c. All other uses - twenty-five (25) feet or same as minimum side yard setback, whichever is greater.
- 5. Maximum Building Height
 - a. Amateur Radio Towers- Fifty (50) feet
 - b. Telecommunication Towers and Facilities- See Section 5.23
 - c. All other uses - thirty-five (35) feet, except as provided in Section 5.9 of this Ordinance
- 6. Minimum Lot Width- (as measured at the minimum required front setback)
 - a. Single-family dwellings - eighty (80) feet with thirty-five (35) feet at street right-of-way
 - b. Two-family dwellings - one hundred (100) feet with thirty-five (35) feet at street right-of-way

- c. Planned residential development - See Section 11.1.2(h) of this Ordinance
- d. All other uses - same as R-15

7.3.4 Screening:

Screening, as provided in Section 5.2 of this Ordinance, shall be required for the following uses:

- a. Planned residential developments
- b. All other uses listed in 7.2.4 of this Ordinance

Section 7.4 R-9 Single and Two-Family Medium Density Residential

7.4.1 Permitted Uses:

- 1. All uses permitted in the R-15 District
- 2. Two-family dwellings
- 3. Rest homes, nursing care facilities, and continuing care communities

7.4.2 Conditional Uses:

- 1. All conditional uses listed in 7.2.2 of this Ordinance
- 2. Bed and breakfast inns
- 3. Public safety stations
- 4. Planned residential developments in accordance with Section 7.1.2(14) of this Ordinance and provided the gross density of the development does not exceed eight (8) dwelling units per acre; in the case of a density bonus granted pursuant to Section 11.1.3 of this Ordinance, a total gross density of not more than eleven (11) dwelling units per acre
- 5. Day care centers
- 6. Multi-family dwelling at a density not to exceed eight (8) units per acre

7.4.3 Yard Regulations:

1. Minimum Lot Size
 - a. Single-family dwelling - nine thousand (9,000) square feet, except as provided in Section 7.4.2(5) of this Ordinance
 - b. Two-family dwellings - thirteen thousand (13,000) square feet except as provided in Section 7.4.2(5) of this Ordinance
 - c. Multi-family developments - minimum twenty thousand square feet for first three (3) dwelling units. For more than three (3) units projects shall observe density of eight (8) dwelling units per acre
 - d. Planned Residential Development - See Section 11.1.2(a) of this Ordinance
 - e. Bed and breakfast inns - fifteen thousand (15,000) square feet
 - f. Public safety stations - fifteen thousand (15,000) square feet
 - g. Rest homes and nursing care facilities -twenty thousand (20,000) square feet
 - h. Continuing care communities - one (1) acre
 - i. Day care center - nine thousand (9,000) square feet
 - j. All other uses - same as R-12
2. Minimum Front Setback (As measured from the edge of the street right-of-way line)
 - a. Single and two-family dwellings, bed and breakfast inn and family care home - thirty (30) feet
 - b. Cemeteries and Essential Services, Class 2 - twenty (20) feet
 - c. Planned residential development - See Section 11.1.2(e) of this Ordinance
 - d. Amateur Radio Towers greater than twenty (20) feet in height- Minimum front yard setback of at least 1.5 times the height of the tower
 - e. Telecommunication Towers and Facilities- See Section 5.23
 - f. All other uses - forty (40) feet

3. Minimum Side Yard Setback (An additional ten (10) feet shall be provided on all side yards which abut a public street)
 - a. Single and two-family dwellings - eight (8) feet
 - b. Planned residential development - See Section 11.1.2(f) of this Ordinance
 - c. Public and private elementary and secondary schools - twenty (20) feet
 - d. Church - twenty (20) feet
 - e. Swimming pools not constructed pursuant to a permit authorizing the construction of some private residential development - forty (40) feet
 - f. Community centers or meeting facilities - twenty (20) feet
 - g. Bed and breakfast inn - fifteen (15) feet
 - h. Rest home and nursing care facilities - fifteen (15) feet
 - i. Continuing care community - twenty (20) feet
 - j. Day care center - ten (10) feet
 - k. Telecommunication Towers and Facilities- See Section 5.23
 - l. All other uses - same as R-12
4. Minimum Rear Yard Setback
 - a. Amateur Radio Towers greater than twenty (20) feet in height- Minimum front yard setback of at least 1.5 times the height of the tower
 - b. Telecommunication Towers and Facilities- See Section 5.23
 - c. All other uses - twenty-five (25) feet or same as minimum side yard setback, whichever is greater
5. Maximum Building Height
 - a. Amateur Radio Towers- Fifty (50) feet

- b. Telecommunication Towers and Facilities- See Section 5.23
- c. All other uses - thirty-five (35) feet, except as provided in Section 5.9 of this Ordinance
- 6. Minimum Lot Width- (as measured at the minimum required front setback)
 - a. Single-family dwelling - seventy (70) feet with thirty-five (35) feet at street right-of-way
 - b. Two-family dwelling - eighty (80) feet with thirty-five (35) feet at street right-of-way
 - c. Planned residential developments- See Section 11.1.2(h) of this Ordinance
 - d. Day care center - seventy (70) feet with thirty-five (35) feet at street right-of-way
 - e. Bed and breakfast inn - eighty (80) feet with thirty-five (35) feet at street right-of-way
 - f. Multi-family development - one hundred (100) feet
 - g. All other uses - same as R-12

7.4.4 Screening:

Screening, as provided in Section 5.2 of this Ordinance shall be required for the following uses:

- 1. Planned residential developments - See Section 11.1.2(0) of this Ordinance
- 2. Multi-family developments where such developments adjoin single family developments or undeveloped land in any Residential (R) District
- 3. Country club but no including golf course playing areas
- 4. Essential Services, Class 2
- 5. Outdoor swimming pool not constructed pursuant to a permit authorizing construction of some residential development
- 6. Nursing care facilities

7. Community center or meeting facility
8. Bed and breakfast inn

Section 7.5 Reserved

Section 7.6 RMF Residential Multi-Family District

7.6.1 Permitted Uses:

1. Single-family dwellings (provided that any residential subdivision in excess of twenty (20) lots shall be subject to the issuance of a conditional use permit. This computation shall be based on the aggregate number of lots in all phases of the subdivision.)
2. Two-family dwellings
3. Multi-family dwellings with a gross density of less than eight (8) units per acre
4. Essential Services, Class 1
5. Family care homes for up to six (6) clients
6. Customary home occupations in accordance with Section 5.1 of this Ordinance
7. Churches with a maximum seating capacity of not greater than four hundred (400) seats. Customary accessory uses shall also be permitted. Church owned and maintained cemeteries as an accessory use are permitted. (also see information
8. Public and private elementary and secondary schools
9. Amateur radio towers, twenty (20) or less in height.

7.6.2 Conditional Uses:

The following uses may be permitted after a conditional use permit has been issued by the City Council in accordance with Part 13 of this Ordinance:

1. Multi-family dwellings with a gross density of more than eight (8) units per acre and but no greater than ten (10) units per acre
2. Planned residential developments in accordance with Chapter 11 of this Ordinance and provided the gross density of the development does not exceed nine (9) dwelling units per acre, and in the case of density bonus

granted pursuant to Section 7.1.2(14)(l) of this Ordinance, a total gross density of not more than twelve and six-tenths (12.6) units per acre

3. Essential Services, Class II
4. Amateur radio towers, greater than twenty (20) feet in height.
5. Telecommunication Towers and Facilities
6. Any residential subdivision containing twenty (20) or more lots. This computation shall be based on the aggregate number of lots in all phases of the subdivision.

7.6.3 Yard Regulations:

1. Lot size, yard and height and lot width regulations shall be the same as required in the R-9 District. Permitted density levels for multi-family developments shall be as noted

7.6.4 Screening:

Screening, as provided in Section 5.2 of this Ordinance shall be required for the following uses:

1. Planned residential developments - See Section 11.1.2(0) of this Ordinance
2. Essential Services, Class 2

Section 7.7 R-O Residential-Office District

7.7.1 Permitted Uses:

1. Single-family dwellings (provided that any residential subdivision in excess of twenty (20) lots shall be subject to the issuance of a conditional use permit. This computation shall be based on the aggregate number of lots in all phases of the subdivision.)
2. Office buildings containing five thousand (5,000) square feet or less of gross floor area
3. Churches including customary accessory uses. Church owned and maintained cemeteries as an accessory use are permitted
4. Medical clinic
5. Public and private elementary and secondary schools

6. Family care homes for up to six (6) clients
7. Customary home occupations in accordance with Section 5.1 of this Ordinance
8. Essential Services, Class 1
9. Day care centers, small group
10. Barber shop/beauty shop
11. Amateur radio towers twenty (20) feet or less in height, provided, however, that the tower is in association with a principal residential use only.

7.7.2 Conditional Uses:

1. Two-family and multi-family developments with a gross density of up to ten (10) units per acre
2. Planned residential developments in accordance with Section 7.5.2(4) of this Ordinance
3. Essential Services, Class II
4. Rest homes, nursing care facilities and continuing care communities
5. Day care centers
6. Florists
7. Photocopying and offset printing services
8. Museums
9. Funeral homes
10. Laboratories
11. Bed and breakfast inns
12. Office buildings containing over five thousand (5,000) square feet of gross floor area
13. Amateur Radio Towers greater than twenty (20) feet in height that are associated with a residential use.

14. Telecommunication Towers and Facilities
15. Any residential subdivision containing twenty (20) or more lots. This computation shall be based on the aggregate number of lots in all phases of the subdivision.

7.7.3 Yard Regulations:

- a. Office buildings - nine thousand (9,000) square feet
 - b. Churches - twenty thousand (20,000) square feet
 - c. Multi-family dwellings - twenty-one thousand seven hundred-eighty (21,780) square feet
 - d. Rest homes, nursing care facilities and continuing care facilities - twenty thousand (20,000) square feet
 - e. Day care centers - nine thousand (9,000) square feet
 - f. Photocopying and offset printing - nine thousand (9,000) square feet
 - g. Laboratories - nine thousand (9,000) square feet
 - h. Florists - nine thousand (9,000) square feet
 - i. Funeral home - twenty-one thousand seven hundred-eighty (21,780) square feet
 - j. Bed and breakfast inn - nine thousand (9,000) square feet
 - k. Museum - twenty-one thousand seven hundred-eighty (21,780) square feet
 - l. Other uses - same as in the R-9 District
2. Minimum Front Setback
- a. Single-family dwellings, two-family dwellings, family care homes, bed and breakfast inns - thirty (30) feet
 - b. Office buildings containing five thousand (5,000) square feet or less of gross floor area - thirty (30) feet
 - c. Amateur Radio Towers- A minimum front yard setback of at least 1.5 times the height of the tower

- d. All other uses - forty (40) feet
3. Minimum Side Yard Setback eight (8) feet (An additional ten (10) feet shall be provided on all side yards which abut a private street)
- a. Museum, office buildings, funeral home, florist, laboratory, photocopying and offset printing, multi-family dwelling - twenty (20) feet
 - b. Amateur Radio Towers- A minimum side yard setback of at least 1.5 times the height of the tower
 - c. Other uses - same as the R-9 District
4. Minimum Rear Yard Setback
- a. Amateur Radio Towers- A minimum rear yard setback of at least 1.5 times the height of the tower.
 - b. Telecommunication Towers and Facilities- See Section 5.23
 - c. All other uses - twenty-five (25) feet
5. Minimum Lot Width (As measured at the required front setback); at least thirty-five (35) feet of lot width measured at the street right-of-way line shall be required except as noted)
- a. Office buildings, museums, funeral home, florist, laboratory, photocopying and offset printing, and multi-family dwelling - one hundred (100) feet with at least fifty (50) feet at the street right-of-way line
 - b. Two-family dwellings - eighty (80) feet
 - c. Churches and schools - one hundred-twenty (120) feet with at least fifty (50) feet at the street right-of-way line
 - d. Other uses - seventy (70) feet
6. Maximum Building Height
- a. Amateur Radio Tower- Fifty (50) feet.
 - b. All other uses - thirty-five (35) feet, except as provided in Section 5.9 of this Ordinance

7.7.4 Screening:

Screening, as provided in Section 5.2 of this Ordinance shall be required.

Section 7.8 B-1 Central Business District

7.8.1 The following uses are permitted by right:

Retail Uses

- A. Antique store
- B. Appliance and appliance repair store
- C. Arts and crafts store
- D. Automobile and boat supply store
- E. Automobile service station
- F. Bakeries (retail)
- G. Bicycle store
- H. Beauty supply store
- I. Book and stationery store
- J. Camera shop
- K. Clock shop
- L. Clothing shop
- M. Computer service store
- N. Convenience store (no fuel sales)
- O. Curtain and drape store
- P. Delicatessen
- Q. Dressmaking shop
- R. Drugstore
- S. Dry cleaning stores (pick-up and delivery only)
- T. Dry goods shop
- U. Florist and gift shop
- V. Floor covering, lighting, wallpaper, paint and window covering store
- W. Food store
- X. Formal wear store
- Y. Furniture store
- Z. Furrier
- AA. Gun shop
- BB. Hardware store
- CC. Hobby store
- DD. Household goods shop
- EE. Jewelry and jewelry repair shop
- FF. Key shop
- GG. Linen shop
- HH. Luggage and leather shop
- II. Medical supply store
- JJ. Music store

- KK. Notion and fabric store
- LL. Office supply and equipment
- MM. Pawn shop
- NN. Postal store
- OO. Restaurant
- PP. Second-hand shop (excluding pawn shop)
- QQ. Shoe store
- RR. Shoe repair shop
- SS. Sporting goods and trophy shop
- TT. Tailor and alteration shop
- UU. Toy store
- VV. Variety and department store
- WW. Video rental and sales shop
- XX. Shopping centers, Class A

Services

- A. Automobile parking lot
- B. Barber shop
- C. Beauty shop
- D. Commercial schools providing training in any of the arts, sciences, trades or professions, conducted indoors, with up to fifty (50) enrolled students
- E. Essential Services, Classes 1 and 2
- F. Finance company
- G. Financial institution
- H. Film processing shop
- I. Fitness Center and/or Tanning Salon
- J. Interior decorating studio
- K. ~~Laundromat~~ deleted by City Council 7-14-2014
- L. Library
- M. Locksmith
- N. Maintenance Services
- O. Medical clinic
- P. Museum
- Q. Offices and office buildings for business, professional and public services with a maximum gross floor area of ten thousand (10,000) square feet
- R. Opticians and optical services
- S. Photocopying and offset printing services
- T. Post office
- U. Public safety station
- V. ~~Recycling depository~~ deleted by City Council 7-14-2014
- W. Studios (for artists, musicians, etc.)
- X. Travel agency

Residential Uses

- A. Residential apartments located in the same building and on top of a commercial or office use provided all building and fire codes are met and that at least one (1) off-street parking space is provided per residential unit.

7.8.2 The following uses are permitted subject to the issuance of a conditional use permit by the City Council in accordance with Part 13 of this Ordinance:

Residential Uses

- A. Any multi-family dwelling or development not associated with a commercial use

Retail Uses

- A. Shopping centers, Class A and B
- B. Pet store

Services

- A. Commercial schools providing training in any of the arts, sciences, trades or professions, conducted indoors, with over fifty (50) enrolled students
- B. Automobile parts supply store
- C. Auction houses, indoors (excluding livestock auctions)
- D. Office buildings containing over ten thousand (10,000) square feet of gross floor area
- E. Arcade or amusement center or game room
- F. ~~Telecommunication Towers and Facilities~~ deleted by City Council 7-14-14
- G. Tire Sales (added as amendment 9-14-2009)

7.8.3 Yard Requirements

(NOTE: Yard and height requirements for telecommunication towers and facilities shall be as provided in Section 5. 23.)

- 1. Minimum lot size - none
- 2. Maximum gross floor area of any individual principal use - ten thousand (10,000) square feet
- 3. Minimum lot width - none
- 4. Minimum front yard setback - none
- 5. Minimum side yard setback - none, except ten (10) feet shall be required on all corner lots and twenty (20) feet on side yards which abut any Residential (R) District

6. Minimum rear yard setback - none, except twenty (20) feet shall be required on all lots whose rear yard abuts any Residential (R) District
7. Maximum building height - fifty (50) feet, except as permitted in Section 5.9 of this Ordinance
8. Off-street parking and loading - all off-street parking and loading requirements as prescribed in Part 10 of this Ordinance shall be waived

7.8.4 Screening and Landscaping

Screening shall be required as provided in Section 5.2 of this Ordinance

Section 7.9 B-2 Neighborhood Business District

7.9.1 The following uses are permitted by right:

Retail Uses

- A. Antique store
- B. Appliance and appliance repair store
- C. Arts and crafts store
- D. Automobile and boat supply stores
- E. Automobile service station
- F. Bakeries (retail)
- G. Beauty supply stores
- H. Bicycle store
- I. Book and stationery store
- J. Camera shop
- K. Clock shop
- L. Clothing store
- M. Computer service store
- N. Convenience store
- O. Curtain and drape store
- P. Delicatessen
- Q. Dressmaking shop
- R. Drugstore
- S. Dry cleaning
- T. Dry goods shop
- U. Florist and gift shop
- V. Floor covering, lighting, wallpaper, paint and window covering stores
- W. Food store
- X. Furniture shop
- Y. Furrier
- Z. Greenhouse nurseries
- AA. Hardware store

- BB. Hobby shop
- CC. Household goods shop
- DD. Jewelry and jewelry repair
- EE. Key shop
- FF. Linen shop
- GG. Liquor store
- HH. Luggage and leather store
- II. Medical supply store
- JJ. Music store
- KK. Notion and fabric store
- LL. Office supply and equipment shop
- MM. Pet store
- NN. Postal store
- OO. Restaurant (excluding fast-food and drive-in restaurant)
- PP. Second-hand shop (excluding pawn shop)
- QQ. Shoe store
- RR. Shoe repair shop
- SS. Sporting goods and trophy shop
- TT. Tailor and alteration shop
- UU. Toy store
- VV. Variety and department store
- WW. Video rental and sales shop
- XX. Shopping centers, Class A and B
- YY. Office buildings containing a maximum gross floor area of twenty-five thousand (25,000) square feet

Services

- A. Automobile parking lot
- B. Automobile wash establishment (self service)
- C. Barbershop
- D. Beauty shop
- E. Churches (with up to 400 seats)
- F. Commercial schools providing training in any of the arts, sciences, trades or professions, conducted entirely indoors, with up to fifty (50) enrolled students
- G. Community center
- H. Day care centers
- I. Essential Services, Classes 1 and 2
- J. Film processing shop
- K. Financial institution
- L. Finance company
- M. Fitness and tanning salon
- N. Interior decorating studio
- O. Laundromat
- P. Library
- Q. Locksmith/gunsmith

- R. Maintenance services
- S. Medical clinic
- T. Office-business, professional and public
- U. Opticians and optical services
- V. Photocopying and offset printing services
- W. Post office
- X. Public safety station
- Y. Recycling depository
- Z. Travel agency

7.9.2 The following uses are allowed subject to the issuance of a conditional use permit by the Cherryville City Council in accordance with Part 13 of this Ordinance:

Retail Uses

- A. Restaurant fast-food
- B. Shopping centers, Class C
- C. Office buildings containing over twenty-five thousand and one (25,001) square feet

Services

- A. Animal hospitals
- B. Churches (over 400 seats)
- C. Essential Services, Class 3
- D. Fraternal, social and civic clubs
- E. Lounge
- F. Taxidermist
- G. Commercial schools, providing training in any of the arts, sciences, trades or professions, conducted entirely indoors, with over fifty (50) enrolled students
- H. Auction houses, conducted indoors (excluding livestock auctions)
- I. Arcade or amusement center or game room
- J. Telecommunication Towers and Facilities

7.9.3 Yard Requirements

(NOTE: Yard and height requirements for telecommunication towers and facilities shall be as provided in Section 5. 23.)

- 1. Minimum lot size - none
- 2. Minimum lot width - seventy (70) feet (As measured at the required front setback)
- 3. Minimum front setback - thirty (30) feet (As measured from the edge of the street right-of-way)

4. Minimum side setback - ten (10) feet, except twenty (20) feet shall be required on all corner lots and lots which abut a Residential (R) District
5. Minimum rear setback - twenty (20) feet
6. Maximum building height - thirty-five (35) feet, except as permitted in Section 5.9 of this Ordinance

7.9.4 Screening

Screening shall be required as provided in Section 5.2 of this Ordinance

Section 7.10 B-3 General Business District

7.10.1 The following uses are permitted by right:

Retail Uses

- A. Antique store
- B. Appliance and appliance repair store
- C. Arts and crafts store
- D. Automobile and boat supply stores
- E. Automobile sales lot
- F. Automobile service station
- G. Bakeries (retail)
- H. Beauty supply stores
- I. Bicycle stores
- J. Boat sales lot
- K. Book and stationery store
- L. Building materials store
- M. Camera shop
- N. Catalogue sales store
- O. Clock shop
- P. Clothing store
- Q. Computer service store
- R. Convenience store
- S. Curtain and drape store
- T. Delicatessen
- U. Dressmaking shop
- V. Drugstore
- W. Dry cleaning plant
- X. Dry cleaning stores (pick-up and delivery)
- Y. Dry goods shop
- Z. Farm equipment sales and repair
- AA. Feed and seed store
- BB. Florist and gift shop

CC. Floor covering, lighting, wallpaper, paint, and window covering stores
 DD. Food store
 EE. Formal wear store
 FF. Furniture shop
 GG. Furrier
 HH. Greenhouse nurseries
 II. Gun shop
 JJ. Hardware store
 KK. Hobby shop
 LL. Household goods shop
 MM. Jewelry and jewelry shop
 NN. Key shop
 OO. Linen shop
 PP. Liquor store
 QQ. Luggage and leather goods store
 RR. Medical supply store
 SS. Mobile home sales and service
 TT. Music store
 UU. Notion and fabric shop
 VV. Office supply and equipment shop
 WW. Pawn shop
 XX. Pet store
 YY. Postal store
 ZZ. Restaurant
 AAA. Restaurant, fast-food
 BBB. Second-hand shop
 CCC. Shoe store
 DDD. Shoe repair shop
 EEE. Sporting goods and trophy shop
 FFF. Tailor and alteration shop
 GGG. Toy stores
 HHH. Upholstery, cabinet and woodworking shop
 III. Variety and department store
 JJJ. Video rental and sales shop
 KKK. Shopping centers, Class A or B
 LLL. Electronic Gaming Accessory Use

Services

A. Animals hospitals
 B. Auction houses, indoors only (excluding livestock auctions)
 C. Assembly hall, coliseum, ballroom, etc.
 D. Automobile parking lot
 E. Automobile body shop
 F. Automobile wash establishment (self-service)
 G. Bait and tackle shops
 H. Banks

- I. Barbershop
- J. Beauty shop
- K. Bowling alley, indoor skating rink, baseball batting range
- L. Churches
- M. Commercial schools, providing training in any of the arts, sciences, trades or professions
- N. Community center
- O. Day care centers
- P. Electric, plumbing, heating and air conditioning shops
- Q. Essential Services, Classes 1, 2 and 3
- R. Film processing shop
- S. Finance company
- T. Financial institution
- U. Fitness and tanning salon
- V. Fraternal, social and civic clubs
- W. Funeral home
- X. Golf course (miniature and/or driving range)
- Y. Government facilities (excluding jails, prisons and similar penal institutions)
- Z. Interior decorator shop
- AA. Laundromat
- BB. Library
- CC. Locksmith/gunsmith
- DD. Lounge
- EE. Maintenance services
- FF. Medical clinic
- GG. Mini-warehouse
- HH. Motel
- II. Museums
- JJ. Offices-business, professional and public up to 50,000 square feet gross floor area
- KK. Opticians and optical services
- LL. Pawn shops
- MM. Photocopying and offset printing services
- NN. Post office
- OO. Public safety station
- PP. Recording studios
- QQ. Recycling depository
- RR. Tire sales and recapping
- SS. Tattoo Parlor/Body Piercing Establishment

7.10.2 Conditional Uses

The following uses are allowed subject to the issuance of a conditional use permit by the Cherryville City Council in accordance with Part 13 of this Ordinance:

Retail Uses

- A. Express fuel/mini-mart
- B. Shopping centers, Class C

Service Uses

- A. Office buildings containing over fifty thousand (50,000) square feet of gross floor area
- B. Jails
- C. Arcade or amusement center or game room
- D. Telecommunication Towers and Facilities

7.10.3 Yard Requirements

(NOTE: Yard and height requirements for telecommunication towers and facilities shall be as provided in Section 5. 23.)

- 1. Minimum lot size - none
- 2. Minimum lot width - seventy (70) feet (As measured at the required front setback)
- 3. Minimum front setback - forty (40) feet (as measured from the edge of the street right-of-way line)
- 4. Minimum side setback - ten (10) feet, except twenty (20) feet shall be required on all corner lots and lots whose side yard abuts any Residential (R) District
- 5. Minimum rear setback - twenty (20) feet, except thirty (30) feet shall be required on all lots whose rear yard abuts any Residential (R) District
- 6. Maximum building height - fifty (50) feet, except as permitted in Section 5.9 of this Ordinance

7.10.4 Screening

Screening shall be required as provided in Section 5.2 of this Ordinance

Section 7.11 Reserved

Section 7.12 GMC - General Manufacturing and Commerce District

7.12.1 Permitted Uses:

The following uses are permitted by right:

- A. Manufacturing, refining, processing, or assembly of goods or products subject to the following limitations:

Note: The term "SIC" shall refer to the Standard Industrial Classification system as set forth in the SIC Manual published by the United States of America, Executive Office of the President, Office of Management and Budget; and unless a use is defined in this Ordinance, the SIC Manual shall be used to define, clarify or more specifically identify the uses and groups of uses listed under the GMC District. Provided however, while the SIC Manual uses the term "establishments primarily engaged in" in defining types of manufacturing operations, this Ordinance shall be construed to mean that if the activity is conducted at all and is listed conditional then the entire use shall be deemed a "conditional use" as opposed to a "permitted use".

1. The following manufacturing establishments [as identified by their SIC Group Number or Industry Number(s)] shall not be allowed on a permitted basis:
 - a. Meat packing plants (SIC #2011)
 - b. Poultry dressing plants (SIC #2015)
 - c. Pickled fruits and vegetables (SIC #2035)
 - d. Flour and other grain mill products (SIC #2041)
 - e. Animal feeds and pet foods (SIC #2047, 2048)
 - f. Sugar refining (SIC #2061, 2062, 2063)
 - g. Fats and oils (SIC Group #207)
 - h. Beer/malt beverages, wines, brandy, distilled and blended liquors (SIC #2082, 2083, 2084, 2085)
 - i. Processing and packing of canned, cured, fresh, or frozen fish and seafood (SIC #2091, 2092)
 - j. Roasted coffee (SIC #2095)
 - k. The following manufacturing listed under (SIC #2099):
 - (1) Yeast
 - (2) Molasses and sweetening syrups
 - (3) Vinegar

- l. Tobacco products (SIC Major Group #21)
- m. Dying and finishing textiles, except wool fabrics and knit goods (SIC Group #226) and under SIC #2231, and under SIC Group #225 the dying and finishing of wool fabrics and knit goods
- n. Coated fabrics, rubberized and not rubberized (SIC #2295, 3069)
- o. Canvas and related products (SIC #2394)
- p. Sawmills and planing mills, general (SIC #2421)
- q. Wood preserving (SIC #2491)
- r. Reconstituted wood products (SIC #2493)
- s. Pulp mills (SIC Group #261)
- t. Paper mills (SIC Group #262)
- u. Paperboard mills (SIC Group #263)
- v. Industrial inorganic chemicals (SIC Group #281)
- w. Plastic materials, synthetic resins and rubber, cellulosic and other manmade fibers, except glass (SIC Group #282)
- x. Soaps, detergents and cleaning preparations; perfumes, cosmetics, and other toilet preparations (SIC Group #284)
- y. Paints, varnishes, lacquers, enamels and allied products (SIC Group #285)
- z. Industrial organic chemicals (SIC Group #286)
- aa. Agricultural chemicals (fertilizers, pesticides, etc.) (SIC Group #287)
- bb. Miscellaneous chemical products (all products listed under SIC Group #289) (e.g., adhesives, sealants, explosives, printing ink, carbon black, and "other chemical and chemical preparations" listed in SIC #2899)
- cc. Petroleum refining (SIC Group #291)
- dd. Asphalt paving and roofing materials (SIC Group #295)
- ee. Lubricating oils and greases (SIC #2992)

- ff. Products of petroleum and coal classified under SIC #2999
- gg. Tires and innertubes (SIC Group #301)
- hh. Plastic products found under SIC Group #308 when resins made at the same facility
- ii. Leather tanning and finishing (SIC Group #311)
- jj. Flat glass (SIC Group #321)
- kk. Glass and glassware (SIC Group #322)
- ll. Cement, hydraulic (SIC Group #324)
- mm. Structural clay products (SIC Group #325)
- nn. Pottery and related products (SIC Group #326) except handmade pottery arts and crafts involving no more than 1,000 cubic feet of kiln space
- oo. Concrete, gypsum and plastic products (SIC Group #327)
- pp. Cut stone and stone products (SIC Group #328)
- qq. Abrasive products (SIC #3291)
- rr. Asbestos products (SIC #3292)
- ss. Minerals and earths, ground or otherwise treated (SIC #3295)
- tt. Mineral wool (SIC #3296)
- uu. Non-clay refractories (SIC #3297)
- vv. Miscellaneous nonmetallic mineral products listed under SIC Code #3299
- ww. Steel works, blast furnaces, and rolling and finishing mills (SIC Group #331)
- xx. Iron and steel foundries (SIC Group #332)
- yy. Primary and secondary smelting and refining of nonferrous metals (SIC Group #333 and 334)

- zz. Rolling, drawing and extruding of nonferrous metals (SIC Group #335)
- aaa. Nonferrous foundries (SIC Group #336)
- bbb. Metal heat treating (SIC #3398)
- ccc. Manufacture of other primary metal products listed under SIC #3399
- ddd. Metal forgings-iron, steel and nonferrous (SIC #3462 and 3463)
- eee. Coating and engraving of metals and allied services (SIC #3471)
- fff. Manufacture of ordnance (arms, ammunition, etc.) and accessories except vehicles and guided missiles (SIC #348)
- ggg. Power, distribution and specialty transformers (SIC #3612)
- hhh. Electrical industrial carbon and graphite products (SIC #3624)
- iii. Storage batteries (SIC #3691)
- jjj. Primary batteries, dry and wet (SIC #3692)
- kkk. Motor vehicle, truck, bus and passenger car bodies (SIC #3711, 3713)
- lll. Truck trailers (SIC #3715)
- mmm. Motor homes (SIC #3716)
- nnn. Aircraft (SIC #3271)
- ooo. Railroad equipment (SIC #3743)
- ppp. Motorcycles (SIC #3751) except bicycles and bicycle parts
- qqq. Guided missiles and space vehicles and parts (SIC Group #376)
- rrr. Under SIC #3792 - camping trailers
- sss. (Military) tanks (and related armored vehicles) (SIC #3795) but not tank components
- ttt. Under SIC #3861 all photographic supplies but not photographic equipment

uuu. Under SIC #3952 all inks, paints, oils, enamels, and crayons

vvv. Carbon paper and inked ribbons (SIC #3955)

www. Linoleum, asphalted - felt-base, and other hard surface floor covering listed under SIC #3996

xxx. Mining (all of SIC Division B)

- B. Agricultural equipment, sales and service
- C. Assembly halls, coliseums and ballrooms
- D. Auction houses, indoors, excluding livestock
- E. Automobile parking lots
- F. Automobile painting, upholstering, repairs, reconditioning and body work
- G. Automobile sales
- H. Automobile service stations
- I. Automobile wash establishments
- J. Bookbinding shops
- K. Building materials and lumber sales
- L. Cabinet, woodworking and upholstery shops
- M. Commercial schools and schools providing training in any of the arts, sciences, trades and professions
- N. Contractors storage and equipment yards
- O. Convenience stores
- P. Day care center, accessory
- Q. Dry cleaning and laundry plants
- R. Electric, plumbing, heating ventilating and air conditioning and construction supply houses
- S. Essential Services, Class 1, 2 and 3

- T. Farm equipment sales and service
- U. Financial institution
- V. Florist, wholesale
- W. Food catering service and food vending supply
- X. Freezer lockers
- Y. Government facilities not otherwise listed (excluding jails, prisons and similar penal institutions)
- Z. Greenhouses and horticultural nurseries
- AA. Ice plants
- BB. Laboratories: dental, medical, optical and research
- CC. Machinery repair
- DD. Maintenance services
- EE. Manufactured home and recreational vehicle sales and service
- FF. Medical clinic
- GG. Moving and storage facilities (including mini-warehouses)
- HH. Office-business, medical, optical and professional
- II. Passenger bus terminal
- JJ. Photo processing laboratories
- KK. Postal and parcel service processing facility
- LL. Post office
- MM. Product distribution plants
- NN. Public safety stations
- OO. Railroad terminals and yards

- PP. Recycling depository
- QQ. Recycling sorting facility
- RR. Restaurants, including fast-food restaurants
- SS. Roofing manufacturing, repair and installation facilities
- TT. Sign painting and manufacturing shops
- UU. Tin and sheet metal shops
- VV. Tire recapping shops
- WW. Towers and antennae (100) feet or less in height
- XX. Truck sales and repair
- YY. Trucking terminals
- ZZ. Union halls, fraternal and civic organization meeting facility
- AAA. Vehicular and equipment outdoor storage (as a principal use) not for retail sales where:
 - 1. Such items are owned and/or operated by the owner of the lot upon which they are located.
 - 2. Such items are in operating condition or intended to be operated.
- BBB. Warehouses, including mini-warehouses
- CCC. Wholesaler, jobbers, bulk warehouses
- DDD. Wood buildings and Mobile homes (SIC # 245)
- EEE. Telecommunication Towers and Facilities
- FFF. Electronic Gaming Operation, subject to the following performance criteria:

1. No electronic gaming operation may be located within five hundred (500) linear feet of the property line of any church/house of worship or any public or private elementary, middle, or high school, library, public park or playground, daycare center (except a class 1 day care center), or residential (R) zoning district.
2. No two (2) electronic gaming operations may be located within one thousand (1,000) linear feet of each other.

3. No electronic gaming operation shall have more than thirty (30) electronic gaming machines.
4. During hours of operation, electronic gaming operations shall be open for direct, unobstructed access by all safety and enforcement personnel. All entrance doors shall remain unlocked while patrons are on the premises.
5. Any electronic gaming operation that illegally existed prior to the effective date of this Ordinance shall comply with the regulations contained in this Ordinance.
6. All measurements in this section shall be from the outer building walls of the electronic gaming operation to the nearest property line of the specified protected use.
7. Hours of operation shall be as follows: Monday thru Saturday - 10 a.m. - Midnight
Sunday - 1 p.m. - 6 p.m.

7.12.2 Conditional Uses:

The following uses may be allowed upon the issuance of a conditional use permit by the Cherryville City Council:

- A. Manufacture of products listed in Section 7.12.1 A-1 of this Ordinance.
- B. Mines and quarries
- C. Airports and air strips/airplane sales, services and fuel and rentals
- D. Auctions, outdoors and/or livestock
- E. Day care center as a principal use (Note: accessory day care centers are permitted as an accessory use by right)
- F. Express fuel/mini-marts
- G. Farmers' markets
- H. Flea markets
- I. Fuel oil distribution facilities
- J. Fish hatcheries
- K. Junkyards, automobile graveyards and scrap salvage yards
- L. Kennels (indoor and outdoor)

- M. Military reserve center/national guard armory
- N. Outdoor storage of vehicles and/or equipment which are not for retail sale as a principal use which does not meet one or more criteria listed in Section 7.12.1 of this Ordinance.
- O. Penal institutions.
- P. Race tracks.
- Q. Septic tank cleaning service
- R. Slaughter house/abattoir
- S. Adult oriented businesses, subject to the following performance criteria:
 - 1. No such business shall be located within 1,500 feet of any other adult oriented business, as measured in a straight line from property line to property line;
 - 2. No adult oriented business shall be located within 1,500 linear feet of a church, public or private elementary or secondary school, day care center, or public park.
 - 3. The gross floor area of any adult oriented business shall not exceed 3,000 square feet and all business related activity shall be conducted in a building.
 - 4. No adult oriented Business may have sleeping quarters.
 - 5. There shall not be more than one adult oriented business in the same building, structure, or portion thereof. No other principal or accessory use may occupy the same building, structure, property, or portion thereof with any adult oriented business;
 - 6. Except for signs as may be permitted by Section 9.11 of this Ordinance, no printed material, slide, video, photograph, written text, live show, or other visual presentation format shall be visible from outside the walls of the establishment, nor shall any live or recorded voices, music, or sounds be heard from outside the walls of the establishment;
 - 7. No enclosed or underground parking shall be permitted.

7.12.3 Yard Regulations:

(NOTE: Yard and height requirements for telecommunication towers and facilities

shall be as provided in Section 5. 23.)

1. Minimum lot size - none.
2. Minimum lot width - one hundred (100) feet (as measured at the required front setback).
3. Minimum front setback - fifty (50) feet (as measured from the edge of the street right-of-way line).
4. Minimum side setback - twenty (20) feet, except fifty (50) feet shall be required on all lots that abut a Residential (R) District.
5. Minimum rear setback - thirty (30) feet, except that fifty (50) feet shall be required on all lots that abut a Residential (R) District.
6. Maximum structure height - fifty (50) feet, except as permitted in Section 5.9 of this ordinance.

7.12.4 Screening and Landscaping:

Screening shall be required as provided in Section 5.2 of this Ordinance.

PART 8

NONCONFORMITIES

Section 8.1 Purpose and Applicability

Nonconforming uses, which are uses of structures or of land existing at the time of the adoption of this Ordinance, which do not comply with the provisions of this Ordinance, are declared by this Ordinance to be incompatible with permitted uses in the various districts. The purpose of this Article is to regulate and limit the continued existence of uses and structures established prior to the effective date of these regulations or any amendment subsequent thereto that do not conform to these regulations. Any nonconformity created by a change in the classification of property or the text of these regulations shall be regulated by the provisions of this Article. Many nonconformities may continue, but the provisions of this Part are designed, for the most part, to curtail substantial investment in nonconformities and to bring about their eventual improvement or elimination in order to preserve the integrity of these regulations.

Section 8.2 Nonconforming Uses

- 8.2.1** Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses, may continue only in accordance with the provisions of this section.
- 8.2.2** Normal structural repair and maintenance may be performed to allow the continuation of a nonconforming use (except as required in Section 8.2.5 of this Ordinance).
- 8.2.3** A nonconforming use shall not be expanded, nor shall a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located or the occupation of additional lands beyond the boundaries of the lot on which said nonconforming use is located. An existing nonconforming single-family residential use may, however, be enlarged or altered, provided that no additional dwelling units result therefrom. Any such enlargement or alteration located in a non-Residential (R) zone shall be in compliance with all yard requirements of such structures as required in the R-9 District.
- 8.2.4** When a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use. The Board of Adjustment shall have the authority to grant in order allowing for a change in a nonconforming use in accordance with Section 15.4.
- 8.2.5** If a nonconforming use is abandoned for one hundred eighty (180) days; or in the case of settlement of an estate or insurance claim for structural damage, 365 days; the use shall not be allowed to re-establish. All new uses in said structure shall

thereafter be conforming. If said use is destroyed (i.e., received damage to an extent whereby repairs cost more than eighty percent (80%) of its valuation for ad valorem tax purposes at the time of destruction), it may not be allowed to re-establish.

8.2.6 Notwithstanding any other provision of Section 8.2 of this Ordinance a nonconforming manufactured home not located in a manufactured home park may be replaced with another manufactured home provided:

- a. The replacement manufactured home either, **(i)** meets all the minimum requirements for a "Class A" Manufactured Home, or **(ii)** meets all the minimum requirements for a "Class B" Manufactured Home plus all nonconforming Class B replacement homes shall be installed with permanent type non-reflective skirting specifically manufactured for manufactured homes; pressured treated wood (except plain standard surface, pressured treated plywood shall not be considered acceptable), or masonry underpinning. Such underpinning or skirting shall be installed under all elements of the manufactured home and be unpierced except for required ventilation and an access door.;
- b. The replacement manufactured home is placed on the lot in a manner which meets all the setback requirements of the zoning district in which it is to be located or the requirements of the R-9 District, whichever is greater;
- c. That the replacement manufactured home is placed on the lot within one hundred eighty (180) days following removal of the existing manufactured home;
- d. Upon replacement of the existing manufactured home the property will conform to Subsection 5.6.1 of this Ordinance; and
- e. That the manufactured home being replaced was occupied as a residence continuous for the period between one-hundred and twenty (120) and thirty (30) days prior to the date of application for replacement.

8.2.7 The Board of Adjustment shall have the authority to grant an order allowing for the change in location of a nonconforming use of land in accordance with Section 15.4. This provision, however, shall not be applicable to the location of junkyards. Nonconforming junkyard shall be governed as provided in Section 8.11.

Section 8.3 Nonconforming Structures

8.3.1 A nonconforming structure devoted to a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this section.

8.3.2 Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.

8.3.3 A nonconforming structure may not, under any circumstances, be enlarged or altered in a way that increases its nonconformity except by order of the Board of Adjustment in accordance with Section 15.4.

8.3.4 If a nonresidential nonconforming structure is damaged to an extent of less than eighty (80) percent of its ad valorem valuation at the time such damage occurred, the structure may be rehabilitated. The rehabilitated structure shall be placed on the lot in a manner most in conformance with all applicable regulations contained in this Ordinance. If the structure is damaged to a degree of greater than eighty (80) percent of its valuation for ad valorem tax purposes at the time of damage, it may only be rebuilt in a manner consistent with the yard, lot, and bulk regulations of this Ordinance. A residential structure that is damaged to an extent whereby repairs cost less than eighty percent (80%) of its valuation for ad valorem tax purposes at the time of destruction, said structure may be reconstructed on the lot. The structure, once rehabilitated, shall be similar in size and shape to the structure damaged. Said structure shall be placed on the lot in a manner most conforming with the regulations contained in this Ordinance. If the residential structure is destroyed, it shall also be placed in a manner most in conformance with all applicable regulations contained in this Ordinance. In no case shall the reconstructed residential structure be larger in size than the structure that it replaced unless all setbacks required for the zoning district are met.

A building permit for such reconstruction must be secured no later than one hundred and eighty (180) days from the date of destruction of such residential structure. Otherwise such reconstruction shall not be allowed. Notwithstanding any of the above, the Board of Adjustment shall have the authority to grant an order allowing for the replacement of a nonconforming use or structure that has been destroyed in accordance with Section 15.4.

8.3.5 Should a nonconforming structure be moved for any distance on the lot of record, it shall be placed in a manner most in conformance with this Ordinance.

Section 8.4 Nonconforming Accessory Structures

A nonconforming accessory use or accessory structure may be expanded only if the nonconforming features of that use or structure are not expanded and do not increase the degree of nonconformity.

Section 8.5 Nonconforming Lots

8.5.1 Except as provided in Section 8.5.2 of this Ordinance, in any district where a lot has been recorded with the Gaston County Office of the Register of Deeds, and was not in violation of the Zoning Ordinance of the City of Cherryville, North Carolina prior to the effective date of this Ordinance, and such lot does not comply

with the minimum lot area and width requirements for the zoning district in which such lot is located, such lot may be used for any use permitted in that zoning district provided that the principal and accessory structures meet all applicable front, side, and rear yard requirements for that zoning district as provided in this Ordinance.

- 8.5.2** If two or more adjacent unimproved lots, neither one of which meet the lot width and/or at least eighty percent (80%) of the area requirements of the zoning district in which they are located, are of single ownership and are of record at the time of adoption of this Ordinance or any amendment thereto, and if these lots, in combination, meet the dimensional requirements established for lot width and area, the lands involved shall be deemed to be an undivided lot. For the purpose of this Ordinance, said lot(s) shall be used or sold by the owner and all future assigns in a manner which is in compliance with lot, width, and area requirements or as otherwise provided in this Ordinance. Provided however, any lot containing at least twenty thousand (20,000) square feet shall be exempt from this requirement.

Section 8.6 Relief of Front Yard Setback For Certain Dwellings

The front yard requirements of this Ordinance for dwellings shall not apply to any lot where the average setback of existing principal buildings located wholly or partially within one hundred (100) feet on either side of the proposed dwelling and on the same side of the street in the same block and use district as such lot is less than the minimum required front yard depth. In such case the front yard on such lots may be less than the required front yard but not less than the average of the existing front yard on the aforementioned lots, or a distance of fifteen (15) feet from the edge of the street right-of-way, whichever is greater.

Section 8.7 Nonconforming Off-Street Parking and/or Loading

On any lot which contains a use which does not comply with the off-street parking and loading regulations contained in Part 10 of this Ordinance, a certificate of compliance shall not be issued for any expansion (except as provided in Section 10.1.2) and any change of use which would result in a need to increase the number of off-street parking and/or loading spaces required (except as herein provided), until the requisite number of off-street parking spaces and all paving requirements have been met.

A certificate of compliance may be issued when there has been a change in a principal use and the number of off-street parking spaces required for the new use (per Part 10 of this Ordinance) is within ten (10) percent or ten (10) spaces, whichever is less, of the number of off-street parking spaces actually provided. An example of this is as follows:

A principal use (Use A) is located on a lot with two hundred (200) off-street parking spaces. Use A

goes out-of-business and is replaced with Use B. Part of this Ordinance requires that Use B have 208 spaces. A certificate of compliance can be issued for Use B (so long as the use is otherwise in accordance with all applicable requirements of this Ordinance) as the number of deficient spaces (8) is less than the prescribed maximum (10).

Such relief may be granted on a one-time only basis per lot or planned development. In such instances where relief is provided, the additional parking spaces need not be paved (but shall have a graded gravel, crushed-stone or similar dust-reducing surface) if the parking lot prior to said expansion was not paved.

Section 8.8 Nonconforming Manufactured Home Parks

Any manufactured home park which is not constructed in accordance with the standards set forth in Section 12.3 of this Ordinance shall be required to conform to the following standards of this Ordinance within the time period as listed for each standard below. (The period of time given to conform begins at the effective date of this Ordinance, July 10, 1995):

12.3.6	Setbacks (All replacement manufactured homes with a manufactured home park shall be placed in the park so as to conform to all setback requirements contained in Section 12.3.6)
12.3.9	Stand, Underpinning and Tiedown - 5 Years (July 10, 2000)
12.3.10	Steps & Patios - 5 Years (July 10, 2000)
12.3.11	Space Numbers - 2 Years (July 10, 1997)
12.3.14	Park Identification Sign - 2 Years (July 10, 1997)
12.3.15	Interior Streets, Drainage, and Markings - 8 Years (July 10, 2003)
12.3.16	Parking - 2 Years (July 10, 1997)
12.3.17	Trash Facilities - 1 Year (July 10, 1996)
12.3.18	Lighting - 8 Years (July 10, 2003)
12.3.22	Water Service - 1 Year (July 10, 1996)
12.3.23	Sewage Facilities - 4 Years (July 10, 1999)
12.3.24	Screening - 5 Years (July 10, 2000)
12.3.25	Interior Landscaping - 5 Years (July 10, 2000)
12.3.28	Maintenance – Immediate (July 10, 1995)

8.8.1 During the period in which a nonconforming manufactured home parks is allowed to continue in operation as provided for in Section 8.8, the following requirements shall be met:

- a. any expansion of said parks shall conform to Section 12.3 of this Ordinance;

- b. if the park ceases operation for a period greater than ninety (90) days it shall only be re-established in accordance with Section 12.3 of this Ordinance (cessation of operation occurs when either all manufactured homes have been removed or when a manufactured home park is closed by a public authority due to violation of law), and
- c. when a space vacancy occurs or when one manufactured home is replaced with another manufactured home, the replacement manufactured home shall meet the requirements of either Class A or Class B manufactured homes.

Section 8.9 Nonconforming Signs

- 8.9.1** Subject to the restrictions of this Section, nonconforming signs that were otherwise lawful on the effective date of this Ordinance may be continued.
- 8.9.2** No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign or causes a previously conforming sign to become nonconforming.
- 8.9.3** A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this Ordinance. Once a nonconforming sign is removed from the premises or otherwise taken down (i.e., sign post(s) and/or sign frame are removed) or moved, said sign may only be replaced with a sign which is in conformance with the terms of this Ordinance.
- 8.9.4** Minor repairs and maintenance of nonconforming signs necessary to keep a nonconforming sign in sound condition are permitted.
- 8.9.5** If a nonconforming sign is destroyed by natural causes, it may not thereafter be repaired, reconstructed, or replaced except in conformity with all the provisions of this Ordinance, and the remnants of the former sign structure shall be cleared from the land. For purposes of this Section, a nonconforming sign shall be considered "destroyed" if it receives damage to an extent of more than fifty (50) percent of the current replacement cost of the total sign structure.
- 8.9.6** Except as otherwise provided in this Section, the message of a nonconforming sign may be changed so long as this does not create any new nonconformities.
- 8.9.7** If a nonconforming sign which advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed or brought into compliance by the sign owner, property owner, or other party having control over such sign within ninety (90) days after the use has ceased operation or the service or commodity has ceased being offered.

If there is a change of use or name of business on a particular piece of property, and there were one or more on-premise signs that advertised the business, any new signs placed for the new use or business name must meet all sign requirements for the underlying zoning district. An example of this is as follows:

A restaurant has an on-premise freestanding sign having an area of one hundred (100) square feet. The maximum allowable area for said sign in that particular zoning district is sixty-four (64) square feet. If said restaurant ceases operation and is replaced by another principal use or by another restaurant (either of which uses new sign structures), any new free-standing sign advertising the new principal use or business name shall have a maximum area of sixty-four (64) square feet. If the same sign structure used to advertise the former restaurant is used to advertise the new use, said sign structure may remain.

8.9.8 If a nonconforming sign remains blank for a continuous period of six (6) months, that sign shall be deemed abandoned and shall, within thirty (30) days after such abandonment, be altered to comply with this Ordinance or be removed by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For purposes of this Ordinance, a sign shall be deemed "blank" if:

- a. It advertises a business, service, commodity, accommodations, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
- b. The advertising message it displays becomes illegible in whole or substantial part; or
- c. It does not contain an advertising message. (For such purposes, the terms "Sign For Rent", "Sign For Lease", "Sign For Sale", etc. shall not be deemed to be an advertising message.)

8.9.9 Except as otherwise stated herein, all signs prohibited by Section 9.9, Subsections 1-18, of this Ordinance shall be removed entirely or otherwise brought into conformance with this Ordinance, whichever is applicable, within three (3) months of the effective date of this Ordinance.

All existing non-conforming signs that constitute or tend to constitute a hazard to the safe and efficient operation of vehicles upon any public right-of-way, street, passageway, or sight triangle, or that would obstruct the line of sight of motorists or pedestrians, shall be removed. These signs shall be determined by the Zoning Administrator, with the consent of the Chief of Police. All other nonconforming signs (except portable, temporary, or special event signage) and non conforming directional business signs that were in place prior to November 7, 2005 which do

not constitute or do not tend to constitute said hazard shall be allowed to remain.

Section 8.10 Nonconforming Advertising Signs

Signs may remain subject to the requirements of Subsections 8.9.2, 8.9.3, 8.9.5, 8.9.8, and 8.9.9 of this Ordinance.

Section 8.11 Nonconforming Junkyards

Any junkyard less than one (1) acre in area and located in a district not permitting junkyards shall be removed entirely within four (4) years from the effective date of this Ordinance. Any junkyard one (1) acre or more in area and located in a district not permitting junkyards may remain subject to the following conditions:

- (a) No expansion in area occupied by the junkyard shall be allowed;
- (b) The junkyard shall be screened from all adjoining properties and any adjoining street in accordance with Section 5.2 of this Ordinance within four (4) years from the effective date of this Ordinance. Such screening shall consist of, at a minimum, natural plantings set forth in 5.2.3(a) of this Ordinance, plus any additional wall, fencing, or berm to necessary achieve total opacity within the four-year period; and
- (c) Any junkyard that does not meet the setback requirements for outdoor storage upon the effective date of this Ordinance shall meet such requirements within two (2) years of such effective date.

For the purpose of this Section the area of a junkyard shall be the smallest rectangle formed by the ground surface extensively covered by junk materials.

PART 9

SIGNS

Section 9.1 General Intent

The purpose and intent of this Part is to support and complement the various land uses allowed in Cherryville and its extraterritorial area by the adoption of policies and regulations concerning the placement of signs.

The Cherryville City Council does hereby find and declare that outdoor placement of signs to be a legitimate use of private property but that the erection of signs should be controlled and regulated in order to promote the health, safety, welfare and convenience and enjoyment of travel on and protection of the public investment in streets and roads in the Cherryville area and to promote the reasonable, orderly and effective display of such signs, displays and devices. It is also the intent of this Ordinance to prevent signs from dominating the visual appearance of the area in which they are located.

Section 9.2 Sign Illumination

- a. The letter "N" means that the sign shall not be lighted.
- b. The letter "L" means that the sign may be illuminated.
- c. All lighted signs shall have their lighting directed in such a manner as to illuminate only the face of the sign.

Section 9.3 Unsafe Signs

Any sign which is determined by the Zoning Administrator as being insecure, in danger of falling or otherwise endangering the public safety shall be immediately removed by it owner unless it is repaired and made to otherwise comply with the requirements of this Ordinance.

Section 9.4 Sign Setback

Sign setback shall be determined by the Zoning Administrator and if requested, the assistance of the Director of Public Works. The setback of the sign shall be as specified in various sections of this Ordinance.

Section 9.5 Sign Area

Sign area shall be deemed to be the area within a single, continuous perimeter enclosing the extreme limits of characters, lettering, logos, illustrations, or ornamentations, together with any material or color forming an integral part of the display or to differentiate the sign from the background to which it is placed. Structural supports bearing no sign copy shall not be included in the sign area. If a sign is attached to an entrance wall or fence, only that portion of that wall or fence

onto which the sign face or letters are placed shall be calculated in the sign area. Only one side of a sign shall be included in the calculation.

Section 9.6 Sign Height

The height of a sign shall be measured from the highest point of a sign to the grade immediately below it.

Section 9.7 Permit Required

Except as otherwise provided in this Ordinance, it shall be unlawful for any person to erect, construct, enlarge, move or replace any sign or cause the same to be done, without first obtaining a sign permit for such sign from the Zoning Administrator as required by this Ordinance.

Notwithstanding the above, changing or replacing the copy on an existing lawful sign shall not require a permit, provided the copy change does not change the nature of the sign such as to render the sign in violation of this Ordinance.

Section 9.8 Signs Not Requiring Permit

The following types of signs are exempted from permit requirements of Section 9.7 of this Ordinance and may be placed in any zoning district. Such signs shall be in conformance with any applicable requirements contained in this Ordinance. There shall be no limit as to the number of such signs on any lot, except as herein prescribed. All such signs (except government and campaign and election signs) shall be located outside a road right-of-way.

1. Government signs.
2. Memorial signs, plaques or grave markers that are noncommercial in nature.
3. Public interest signs.
4. On-premise instructional signs not exceeding four (4) square feet in area apiece.
5. Identification signs not exceeding three (3) square feet in area (one (1) only per premises)
6. Incidental signs.
7. Campaign and election signs provided that:
 1. If placed within the street right-of-way:
 - a. Each sign shall not exceed five (5) square feet in area.
 - b. Sign height shall not exceed thirty (30) inches above the street level surface nearest to Said sign; provided, however, if said sign is located within twelve (12) feet of the point of intersection of the edges of pavement of two intersecting

streets, no such sign shall exceed thirty (30) inches in height above said street level. Notwithstanding the foregoing, the Zoning Administrator shall remove any sign or group of signs that he deems to be an obstruction to the safe vision of motorists.

- c. Such signs shall not be put up more than thirty (30) days prior to election day and must be removed within seven (7) days following election day; provided, however, signs of candidates in a runoff election may remain up until seven (7) days following said runoff election.
 - d. No such sign shall be placed over any curb, street surface, or sidewalk; or utility pole, government sign or signpost, bridge, tree, rock, fence or guardrail, or within fifteen (15) feet of any fire hydrant.
 - e. The tenant or other person entitled to possession of the property fronting along the street right-of-way on which such sign is placed may remove such sign at any time.
 - f. Such signs shall not be placed on right-of-way fronting public facilities (e.g. government office or operations center, post office, public park, public cemetery, courthouse, public safety station, public library, public museum, public school, etc.) except on election day where said public facility is a polling place and are placed in accordance with the rules of the Board of Elections.
 - g. Such signs shall not be placed in the B-1 (Central Business) District
2. If placed on private property, outside the street right-of-way:
- a. Sign area shall not exceed thirty-two (32) square feet.
 - b. Sign height shall not exceed ten (10) feet or 2.5 times the vertical dimension of the sign face, whichever is less.
 - c. No such sign shall obstruct the safe vision of motorists.
3. No campaign or election sign shall be lighted or luminous, nor shall it have any flashing lights or moving or windblown parts.
4. No campaign or election sign shall be placed on public property, outside the street right-of-way except at polling places on Election Day in accordance with the rules of the Board of Elections.
5. Any campaign or election sign not erected in accordance with these rules shall be subject to removal by the Zoning Administrator.

8. Temporary real estate signs advertising specific property for sale, lease, rent or development shall be located as follows:
 - a. One sign advertising real estate "For Sale", "For Rent", "For Lease" or "For Development" not greater than ten (10) square feet in area in all Residential (R) Districts and thirty-two (32) square feet in area in nonresidential districts may be located on the property being advertised so long as said sign is located behind the street right-of-way line. If the property so advertised lies on a corner lot, then a second sign may be permitted so long as said signs are at least two hundred (200) feet apart as measured by the shortest straight line. No sign shall be located in the right-of-way or a sight triangle.
 - b. In addition to the on-site sign(s), a maximum of three (3) directional signs, each not exceeding three (3) square feet in area, shall be permitted to be located off the subject premises. The message of said signs shall be limited to the name of the property or development being advertised, a directional arrow, mileage to the subject property, and the terms "Lot/Home For Sale", "For Rent", "For Lease", "For Development", etc. No sign shall be located in the right-of-way or sight triangle.
 - c. All such temporary signs shall be removed within seven (7) days after the property has been sold, rented, leased, etc.
 - d. No more than three (3) temporary directional signs advertising a specific shopping center, planned mixed-use development, subdivision etc. may also be permitted off-site. Each such sign shall be no greater than three (3) square feet in area. No sign shall be located in the right-of-way or sight triangle.
9. Construction signs up to sixty-four (64) square feet for each project provided that:
 - a. Only one (1) sign per street front per premises shall be erected. No subcontractor or financial advertising signs shall be allowed unless they are incorporated onto the Contractors main construction sign.
 - b. Signs shall not be illuminated.
 - c. Signs shall be removed within seven (7) days after the Certificate of Occupancy has been issued.
10. Temporary special event signs or banners for religious, charitable, civic, fraternal or similar organizations provided that:
 - a. Signs shall be erected no sooner than thirty (30) days and removed no later than seven (7) days after the event.
 - b. All signs shall be located on private property except such signs may be located within a road right-of-way subject to approval of the Zoning Administrator.
 - c. Portable changeable copy signs for such use may be allowed.

11. **Reserved.**
12. One (1) on-premise yard sale sign per yard sale. Such sign shall be removed within twenty-four hours after the yard sale has been terminated.
13. Directional signs provided that:
 - a. Such signs may only be used in conjunction with a religious, charitable, civic, fraternal or similar organization. If a sign is temporary (designed to be on the ground for a period of less than thirty (30) days), a zoning permit shall not be required. If such sign is to be on the ground for a period of thirty (30) days or more, a zoning permit shall be required.
 - b. No more than three (3) directional sign per principal use may be erected
 - c. All such signs shall be located outside of any road right-of-way
 - d. All such signs greater than thirty (30) inches in height as measured from the grade of the road upon which it fronts shall be located outside the required sight distance triangle indicated in Section 5.7 of this Ordinance.
 - e. All such signs shall not be illuminated
 - f. All directional signs shall be freestanding signs. Portable signs shall be prohibited
 - g. There shall be no greater than four (4) directional sign poles at the intersection of any two (2) roads
 - h. More than one sign may be hung from the same pole
 - i. In no case shall any sign be located closer than one (1) foot above grade
 - j. No two (2) directional signs hung from separate poles shall be located within five (5) feet of each other
 - k. The maximum area of any directional sign shall be three (3) square feet

Section 9.9 Prohibited signs

In all zoning districts the erection, construction, location and/or the use of any sign is prohibited as follows. Such signs, if deemed to create a public safety hazard by the City Manager or the Zoning Administrator, may be removed immediately; otherwise, prohibited signs shall be removed as provided under

1. No sign shall contain statements, words or pictures which describe or display "specified anatomical areas" or "specified sexual activities," as defined in the City of Cherryville Zoning Ordinance, or which contain words which are classified as "vulgar" or "vulgar slang" in The New College Edition of the American Heritage Dictionary.
2. No sign shall be permitted on or protrude into a public right-of-way, street or passage except as provided specifically for herein.
3. Except for signs installed by or with the approval of an appropriate governmental agency, no sign shall be attached to, hung or painted on any curb stone, hydrant,

lamppost, barricade, temporary walk, telephone pole, telegraph pole, electric light pole or other utility pole, public fence or on a fixture of a fire alarm or police call system within any public right-of-way.

4. No sign shall be permitted whereby its location, nature or type constitute or tends to constitute a hazard to the safe and efficient operation of vehicles upon any public, right-of-way, street or passageway.
5. No sign shall be permitted that would obstruct the line of sight of motorists or pedestrians at intersections, driveways, or along any public right-of-way, street or passageway.
6. No sign shall be permitted, as specified in Section 136-30 of the General Statutes of North Carolina that would obstruct or resemble traffic signs or signals, or would tend to be confused with a flashing light of an emergency vehicle.
7. No sign shall be permitted to prevent free ingress and egress from any door, window, fire escape, downspout, stairway, ladder, or opening intended as a means of providing light or air.
8. No sign shall be permitted containing or consisting of banners, posters, pennants, ribbons, balloons, streamers or other similarly moving devices or ornamentation, except as specifically provided herein by permit.
9. No sign shall be permitted which contains or utilizes revolving or rotating beams of light of stroboscopes.
10. No detached sign shall be located closer than ten (10) feet in any direction from any power or transmission line. (NOTE: This does not include the supporting structure e.g., the power pole.)
11. No detached sign shall be located within the triangular sight distance as defined per Section 5.7.
12. No sign shall be placed on a vehicle or trailer which is parked or located for the primary purpose of displaying said sign (this does not apply to permitted portable changeable copy signs, or to signs or lettering on buses, taxis, or vehicles operating during the normal course of business).
13. Signs with flashing or intermittent lights or lights with reflective devices of changing degree of intensity or color. Animated signs are prohibited. Signs with devices which produce flashing light and signs which produce scrolled messages are prohibited, however, signs which give time and temperature are permitted, provided such messages are limited to only time and/or temperature. If a time and temperature sign alternates between a time message and a temperature message it shall continuously show one message a minimum of three (3) seconds time before switching to the other message.
14. Outdoor advertising signs shall not be permitted.
15. Any sign located in such a way as to intentionally deny an adjoining property owner visual access to an existing sign.
16. Portable signs except as permitted by permit in this Ordinance.
17. All signs that are located within any public right-of-way, e.g., on utility poles, street markers, traffic signs, etc., in violation of this chapter may be removed and disposed of by the Code Enforcement Officer (or other public employee as authorized by the City Manager) without notice.

Section 9.10 Signs Permitted In All Residential (R) Districts

Signs allowed without a permit are listed in Section 9.8 of this Ordinance. The following signs may be placed in such districts subsequent to the issuance of a permit by the Zoning Administrator. All other signs shall be prohibited.

- a. Signs on premises of multi-family developments and mobile home parks, day care centers, nursing home, rest homes and homes for the aged, small group day care centers and bed and breakfast inns, churches, schools, and publicly or privately owned and operated outdoor recreation facilities, cemeteries and public safety stations are regulated as follows:
 1. Types of sign permitted: Identification
 2. Permitted number of signs: One (1) per premises per public street front
 3. Maximum area of signs: Fifteen (15) square feet if located on a lot one (1) acre or less in area; thirty (30) square feet if located on a lot greater than one (1) acre in area.
 4. Permitted illumination: Illuminated signs may be lit from external sources only.
 5. Setback of sign: Minimum of ten (10) feet behind the right-of-way. No sign shall be located within a sight triangle.
- b. Permanent subdivision identification are regulated as follows:
 1. Types of sign permitted: Identification
 2. Permitted number of signs: One (1) per subdivision per subdivision entrance
 3. Maximum area of signs: Fifty (50) square feet
 4. Permitted illumination: Illuminated signs may be lit from external sources only.
 5. Setback of sign: Minimum of ten (10) feet behind the right-of-way. No sign shall be located within a sight triangle.

Section 9.11 Signs Permitted In Business (B) And GMC Districts

- 9.11.1** The following are regulations for all wall signs and freestanding signs for all uses except that such regulations shall not be applicable to free-standing signs in shopping centers business parks, office buildings and other multi-tenant developments. Said regulations are found in Section 9.11.2 of this Ordinance. Signs allowed without a permit are found in Section 9.9 of this Ordinance. Portable signs shall be allowed per Section 9.13.3. All other signs shall be prohibited.

1. Types of sign permitted: Business, identification
2. Permitted number of signs: Wall. No limit. Signs may include permanent type trademark/manufacturer signs.

Free-standing. One (1) only except two (2) shall be permitted if the principal use has direct access from two (2) or more public roads. A free-standing sign shall not be permitted as indicated in Section 9.13.2(4)
3. Maximum area of signs: Wall. A maximum of ten (10) percent of the wall area of any wall on the building. Except as provided herein and in Section 9.13.1, in no instance shall any principal use be allowed to have an aggregate wall sign area in excess of one hundred (100)-square feet

Free-standing. The area of the sign shall be a function of the road upon which the building containing the use being identified fronts. The following schedule shall apply:

<u>Thoroughfare Plan</u>	<u>Sq Ft</u>	<u>Minimum Setback</u>
Major Arterial	64	10 ft behind r-o-w
Minor Arterial	64	10 ft behind r-o-w
Collector	32	10 ft behind r-o-w
Local	24	10 ft behind r-o-w

4. Maximum height: Wall. Signs shall not be allowed to extend above the parapet of the building

Free-standing. The height of free-standing signs shall be a function of the road upon which the principal building containing the use being advertised fronts. The following schedule shall apply:

Road Classification(In Accordance With
The Cherryville Thoroughfare Plan

Major Arterial	20 Ft
Minor Arterial	20 Ft
Collector	15 Ft
Local	15 Ft

5. Permitted illumination: L or N

9.11.2 Shopping center and other multi-tenant free-standing identification signs.

1. Types of sign permitted: Identification
2. Permitted number of signs: A shopping center or planned mixed use development either of which contains two (2) or more nonresidential uses located in a unified building or group of buildings may have one (1) free-standing identification sign giving the name of the development and/or the name of the businesses and other uses occupying the development. A second sign shall be permitted if the development has direct access from two (2) or more public roads. No other on-premise freestanding signs shall be permitted.
3. Maximum area of signs: The maximum area of freestanding identification signs shall be:
 - A. For developments with a gfa of 0-19,999 sq. ft:
Local Street (2-3 lane): 32 sq. ft.
Other Street (4+ lane): 64 sq. ft
 - B. For developments with a gfa of 20,000-49,999 sq ft:
Local Street (2-3 lane): 64 sq. ft.
Other Street (4+ lane): 100 sq. ft.
 - C. For developments with a gfa of 50,000-199,999 sq. ft:
150 sq ft
 - D. For developments with a gfa of 200,000+ sq. ft:
200 sq ft
4. Permitted illumination: L or N

5. Permitted height: The maximum height of the sign(s) shall be:

A. For developments with a gfa of 0-19,999 sq. ft:

For signs with an area of 0-32 sq ft and fronting a Local Street (2-3 lane) Maximum of 15 ft in height

For signs with an area of 33-64 sq ft and fronting a street (4+ lane) Maximum of 20 ft in height

B. For developments with a gfa of 20,000-49,999 sq ft:

For signs with an area of 0-64 sq.ft. and fronting a Local Street (2-3 lane): 20 ft in height

For signs with an area of greater than 65-100 sq ft and fronting a street (4+ lane) a maximum of 20 ft in height

C. For developments with a gfa of 50,000-199,999 sq ft:

For signs with an area of up to 150 sq ft a maximum 30 ft in height

D. For developments with a gfa of 200,000+ sq ft:

For signs with an area of up to 200 sq ft a maximum of 30 ft in height

6. Permitted location:

If two (2) free-standing signs are located on the same premises, they shall be located at a minimum distance of one hundred (100) feet from each other as measured by the shortest straight line connecting each sign. All free-standing signs shall be located the required setback behind the street right-of-way per Section 9.11.1, (3).

Section 9.12 Reserved.

Section 9.13 Additional Specifications for Identification Signs Requiring A Permit

The following are general specifications applicable to the various permitted signs. Additional specifications regarding size, number, location, and permitted types of signs are set forth in the individual zoning districts.

9.13.1 Wall Sign

1. The maximum permitted aggregate area of wall signs per premises may be increased beyond that which is normally allowed using either (but not both) of the following methods:
 - a. If a freestanding sign is not used on the premises, the aggregate area of wall signs may be increased by twenty (20) percent per premises.
 - b. The aggregate area of all wall signs per premises may be increased based on the distance, the principal building is set back from the required front setback line. Said increase shall be in accordance with the following Table:

<u>Principal Building Distance Setback From The Required Front Setback</u>	<u>Allowed Aggregate Wall Sign Area Increase</u>
0-149 Feet	25 Percent
150-249 Feet	50 Percent
250-349 Feet	75 Percent
350 Feet or More	100 Percent

2. No wall sign shall project more than 18 inches from the building wall. Further, no wall sign or its supporting structure shall cover any window or part of a window.
3. Canopy and awning signs may be substituted for part or all of the allowable wall signage per premises. Signs may be painted or printed onto a canopy or awning. In no instance shall a canopy or awning sign extend into the roadway.
4. A projecting sign may be substituted for part or all of the allowable wall signage per premises. A projecting sign shall not project more than four feet from a building. In no instance shall a projecting sign extend into a street right-of-way.

9.13.2 Free-Standing Signs

1. All free-standing signs shall be located the required setback behind the street right-of-way per Section 9.11.1, (3). Any such sign greater than two and one-half (2-1/2) feet in height as measured from the grade of the road upon which it fronts shall be located outside the required sight distance triangle as indicated in Section 5.7 of this Ordinance.

2. The bottom of all free-standing signs that are not ground mounted and which are located within fifteen (15) feet of the street right-of-way shall be at least ten (10) feet in height as measured from the grade.
3. No freestanding sign shall be located closer than five (5) feet to any adjacent side lot line.
4. Any premise permitted to display freestanding pole signs shall do so only if the principal building containing the use being advertised in which is set back at least thirty (30) feet from the edge of all immediately adjacent street rights-of-way. Said regulations shall not apply to establishments wishing to erect monument or ground-mounted signs.

9.13.3 Temporary and special event signage in nonresidential districts

- a. **Banners.** Allowed for special events, sales, and grand openings with a permit for up to thirty (30) days of consecutive use, two (2) times per calendar year (separated by a minimum of thirty (30) days). There shall be no more than two (2) banners per occupancy per permit. At the end of the permit period, the banner shall be removed.
- b. **Special Purpose Signs** (Temporary & Portable) Signs. Allowed for special events, sales, and grand openings with a permit for up to thirty (30) days of consecutive use, two (2) times per calendar year (separated by a minimum of thirty (30) days). There shall be no more than two (2) temporary signs per occupancy per permit. At the end of the permit period, the Special Purpose Sign(s) shall be removed. Museums and cultural arts centers within the City of Cherryville shall be permitted continuous year-round display of one (1) Special Purpose Sign and there is no time constraint imposed upon any one (1) Special Purpose Sign's display.
- c. **Portable Changeable Copy Signs:** Allowed for special events, sales, and grand openings with a permit for up to thirty (30) days of consecutive use, two (2) times per calendar year (separated by a minimum of thirty (30) days). Portable Changeable Copy signs shall be non-lighted and shall not exceed thirty-two (32) square feet in size and four (4) feet in height, or be located within five (5) feet of any property line. The sign also shall be located ten (10) feet behind the right-of-way and shall not interfere with a minimum 300 foot sight distance for any traffic entering or exiting from any property or intersecting street or traveling along any street. At the expiration of the permit period, the sign, which includes the lettering as well as the signage cabinet, shall be removed and not be visible from any street.

- d. **Pennants, ribbons, balloons, streamers or other similarly moving devices or ornamentation**: Allowed for special events, sales, and grand openings with a permit for up to thirty (30) days of consecutive use, two (2) times per calendar year (separated by a minimum of thirty (30) days). At the end of the permit period, all pennants, ribbons, balloons, streamers or other similarly moving devices or ornamentation shall be removed.

Section 9.13.4 – Portable Sidewalk Signs

Notwithstanding the requirements of **Section 24-1**, Obstructions Generally (on streets and sidewalks) of the **City of Cherryville Code of Ordinances**, portable sidewalk signs (as defined in Section 4.1 of this ordinance) shall be permitted in the Central Business (B-1) provided that placement of such sign upon private property or a public sidewalk shall be approved by the City Manager or his designee as outlined in **Section 9.13.5** of this ordinance.

Section 9.13.5 – Portable sidewalk signs permitted in the Central Business District (B-1)

Any premises or principal building within the Central Business District (B-1) may place a portable sidewalk sign (after obtaining a permit as required in Section 9.7 of this ordinance) on the city sidewalk subject to the following restrictions:

- (1) **Number of signs:** Any premises, including those containing multiple businesses, may place only one (1) portable sidewalk sign per street frontage.
- (2) **Area and height:** Any sidewalk sign shall not exceed eight (8) square feet per side in area. In addition, the width of the sign shall not exceed two (2) linear feet, with a maximum height of four (4) feet. However, a "T" – frame or an easel sign may have a height of six (6) feet. Within these specified maximum dimensions, creative shapes that reflect the theme of the business being advertised are encouraged (i.e., ice cream shop may display a sign in the shape of an ice cream cone).
- (3) **Display hours:** Portable sidewalk signs shall be displayed only during operational hours of the business being advertised and shall not be lighted. These signs must be removed each day at the close of business.
- (4) **Location:** Portable sidewalk signs shall be placed on the sidewalk directly in front of the associated use. Along streets with no parallel parking, portable sidewalk signs shall be placed on the sidewalk, but a pathway clearance of four (4) feet shall be maintained. Along streets with parallel parking, a two-foot step-out zone shall be provided, and portable sidewalk signs shall be placed on the sidewalk at least two (2) feet from the curb. The location of any portable sidewalk sign shall be at least twenty (20) feet from any intersection and at least five (5) feet from any crosswalk or fire hydrant. No sidewalk sign shall be placed where the unobstructed space for the passageway of pedestrians is reduced to less than four (4) feet. If a building is located on a corner within the twenty (20) foot sight triangle, then the

portable sidewalk sign shall be placed against the base of the building. Trees, poles, signs, hydrants, trash receptacles, tree grates, etc., are all considered obstructions.

- (5) **Materials, appearance:** The sign must be constructed of materials that present a finished appearance. Rough cut plywood is not acceptable. The sign lettering should be professionally painted or applied; a "yard sale" or "graffiti" look with hand painted or paint-stenciled letters is not acceptable, however, chalkboard signs shall be permitted. The written message of the sign should be kept to the minimum necessary to communicate the name of a business or a special message of the business.
- (6) **Indemnification:** Any person erecting a portable sidewalk sign shall indemnify and hold harmless the city and its officers, agents, and employees from any claim arising out of the presence of the sign on city property or rights-of-way. The person erecting a sidewalk sign shall sign an indemnification agreement, approved by the City Attorney, prior to the issuance of a sign permit. The indemnification agreement shall be accompanied by evidence of insurance covering the liability assumed in this subsection and the agreement.
- (7) **Determination by City Manager:** Questions as to any of the restrictions above should be directed to the City Manager or his designee.

Section 9.13.6 – Sandwich Board Signs permitted in the Neighborhood Business (B-2) and General Business (B-3) Districts

Any premises or principal building within the Neighborhood Business (B-2) and General Business (B-3) Districts may place a sandwich board sign (after obtaining a permit as required in Section 9.7 of this ordinance) on their property subject to the following restrictions:

- (1) **Number of signs:** Any premises, including those containing multiple businesses, may place only one (1) sandwich board sign per business.
- (2) **Area and height:** Any sandwich board sign shall not exceed twelve (12) square feet per side in area. In addition, the width of the sign shall not exceed three (3) linear feet, with a maximum height of four (4) feet. Within these specified maximum dimensions, creative shapes that reflect the theme of the business being advertised are encouraged (i.e., ice cream shop may display a sign in the shape of an ice cream cone).
- (3) **Location:** Sandwich board signs shall be placed directly in front of the associated use and be located on the same parcel as the business. If placed on a sidewalk/walkway within a business development, a pathway clearance of four (4) feet shall be maintained. The location of any sandwich board sign shall be at least twenty (20) feet from any intersection and at least five (5) feet from any crosswalk or fire hydrant. No sandwich board sign shall be placed where the unobstructed space for the passageway of pedestrians is reduced to less than four (4) feet. Trees, poles, signs, hydrants, trash receptacles, tree grates, etc., are all considered obstructions. Sandwich board signs shall not be placed closer than ten (10) feet from a right-of-way. No sandwich board sign or any other sign shall be placed in a

right-of-way, fire lane, or actively used parking area.

- (4) **Materials, appearance:** The sign must be constructed of materials that present a finished appearance. Rough cut plywood is not acceptable. The sign lettering should be professionally painted or applied; a "yard sale" or "graffiti" look with hand painted or paint-stenciled letters is not acceptable, however, chalkboard signs shall be permitted. The written message of the sign should be kept to the minimum necessary to communicate the name of a business or a special message of the business.
- (5) **Determination by City Manager:** Questions as to any of the restrictions above should be directed to the City Manager or the Zoning Administrator.

PART 10

OFF-STREET PARKING AND LOADING REQUIREMENTS

Section 10.1 Off-Street Parking Requirements

Every new use, or an enlargement, expansion or alteration of an existing use, shall require off-street parking in compliance with this Ordinance, except that all off-street parking requirements shall be waived within the B-1 District.

10.1.1 The number of required off-street parking spaces shall be increased when a change of use of either a structure or of land requires additional parking spaces in compliance with this Part. Parking spaces may be decreased when a change of use requires fewer spaces than provided for in the previous use.

10.1.2 A principal use that is not deficient in the number of off-street parking spaces provided may expand or the property may change in use without having to provide additional off-street parking spaces under certain circumstances. Such circumstances are:

1. When, after the expansion or change in use, the number of off-street parking spaces provided still meets or exceeds the required minimum.
2. If the expansion or change in use results in the need to create no greater than ten (10) percent or ten (10), whichever is smaller, additional spaces. These additional spaces may be waived on a one-time basis only. Such waiver may only be applied once to any individual principal use, or to any shopping center, office park or similar planned multi-tenant development. (See Section 8.7)

Otherwise, no reduction shall be allowed for the number of off-street parking spaces parking for any use which expands when, prior to such expansion, said use was deficient in the number of off-street parking spaced provided.

10.1.3 A certificate of occupancy will not be issued for any use until all off-street parking and loading requirements in accordance with this Ordinance have been met and are in place and ready for use.

10.1.4 Off-Street Parking shall be located as follows:

- a. Off-street parking spaces shall generally be provided on the same lot of record as the principal use. In instances where such parking cannot be reasonably provided on the same lot of record, it shall be provided on a separate lot of record, fifty (50%) percent or more whose area is located

within five hundred (500) feet of the lot of record on which the principal use is located. All such off-street parking areas located in a Residential (R) District shall require the issuance of a conditional use permit by the City Council in accordance with Part 13 of this Ordinance.

- b. Cooperative provisions for off-street parking may be made by contract between owners of adjacent properties, and such contract shall be filed with the Zoning Administrator. The parking area provided on any one lot may be reduced to not less than one-half (1/2) the number of parking spaces required for the use occupying such lot. The end result of such cooperative parking shall be that the total number of parking spaces provided equals or exceeds that which would be required for each use if computed separately.

Any sharing of required parking spaces by uses located on different parcels shall be guaranteed by a legally binding written agreement between the owner of the parking area and the owner of any use located on a different lot and served by the parking area.

- c. No off-street parking area shall be located over an active or auxiliary (repair area) septic tank field.
- d. The temporary parking or storage of manufactured homes shall be prohibited in all areas that do not permit manufactured homes or in manufactured homes sales lots.
- e. For all non-residential uses (except those located in the B-1 District), no off-street parking, loading, or product display areas shall be located within ten (10) feet of any street right-of-way line unless otherwise noted.
- f. On any lot less than two (2) acres in area located in a Residential (R) zoning district, no more than one (1) commercial vehicle may be parked on an overnight basis on private property. The vehicle shall be a single unit truck (i.e., a truck without a trailer) and not have a length of greater than thirty-five (35) feet. The vehicle shall be parked off-street and shall be used by the residents of the lot upon which it is located. This shall not be construed to prevent the temporary parking of delivery trucks, moving vans, and similar vehicles.

10.1.5 Design standards for parking areas are as follows:

- a. Except as here in provided, each parking space shall contain a rectangular area of at least nineteen (19) feet in length and nine (9) feet in width. Whenever parking areas consist of spaces set aside for parallel parking, the dimensions of such parking spaces shall be not less than twenty-two (22) feet in length and nine (9) feet in width. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so

long as the parking spaces so created contain within them the rectangular area required by this section.

- b. Parking area aisle widths shall meet the following minimum dimensions:

<u>Aisle Width (Feet)</u>	<u>Parking Angle In Degrees</u>			
	<u>0</u>	<u>45</u>	<u>60</u>	<u>90</u>
One-way Traffic	13	13	18	24
Two-way Traffic	19	21	23	24

- c. All newly created or expanded off-street parking areas that contain more than four (4) off-street parking spaces that are regularly used at least five (5) days per week shall be graded, paved and surfaced with asphalt, concrete or equivalent protection against potholes and dust. Any expansion to an existing unpaved off-street parking area that contained more than four (4) spaces, or, as a result of the expansion, contains more than four (4) spaces, shall require the paving of the entire parking area. Off-street parking areas that are not required to have such surfaces shall be graded and surfaced with crushed stone, gravel or other like material to provide a surface that is stable and will help reduce dust and erosion. For any off-street parking area which does not require a paved parking area surface, whenever such an area abuts a paved street, the driveway leading from such street to such area (or, if there is no driveway, the portion of the parking area that opens onto such streets) shall be paved in a manner as herein provided to a distance of fifteen (15) feet back from the edge of the paved street. This requirement shall not apply to single-family or two-family residences or any other use that is required to have five (5) or less off-street parking spaces. It shall also not apply to parking designated only for employees of a business.
- d. All off-street parking areas shall be designed so that vehicles cannot extend over sidewalks or bump against any wall, vegetation or other obstruction.
- e. Circulation patterns within off-street parking areas shall be so designed so that vehicles can proceed safely without posing a danger to pedestrians or other vehicles both inside and outside the off-street parking area.
- f. Parking spaces that are required to have paved surfaces shall be appropriately demarcated with painted lines. Unpaved parking spaces shall also be demarcated by clearly visible markings such as wheel stops or marks painted on border materials.

10.1.6 Permits for driveway locations on State-maintained roads shall be obtained from the North Carolina Department of Transportation.

10.1.7 Storm drainage facilities shall be required, and shall be so designed as to protect any public right-of-way or adjacent property from damage.

10.1.8 The requirements for off-street parking spaces shall be computed as follows:

- a. When units of measurement determining the number of required parking spaces result in a fractional space, any fraction of one-half (1/2) or more shall require one (1) parking space.
- b. Where seats consist of pews or benches, each twenty (20) inches of a pew or a bench shall be considered as one seat.
- c. For the purpose of computing parking requirements based on the number of employees, the on-site owners or managers shall also be considered employees.
- d. Lots containing more than one principal use shall provide parking in the amount equal to the total of the requirements for each use.
- e. The number of required off-street parking spaces designed for use by handicapped persons as prescribed by the North Carolina State Building Code shall be computed separately from the off-street parking requirements as otherwise contained in Section 10.1.9.

10.1.9 The following chart indicates the minimum number of off-street parking spaces required for any use developed or expanded. Such requirements are in addition to those outlined in Section 10.1.8(e) of this Ordinance regarding handicapped parking. Where questions arise concerning the minimum off-street parking requirements for any use not specifically listed, the requirements may be interpreted by the Zoning Administrator as those for the most similar use that is listed.

<u>Use Classification</u>	<u>Minimum Parking Space Requirement</u>
Animal Hospital, Clinic, Veterinarian or Kennel	One (1) space per 200 square feet of gross floor area
Automobile Repair, Paint or Body Shops	One (1) space per employee during the shift of greatest employment plus four (4) spaces per bay
Automobile Sales	See sales lots
Automobile Washing and Cleaning Establishments	One (1) space for each three (3) employees and reserve spaces equal to three (3) times the capacity of the establishment

Banks, Savings and Loans, and other Financial Institutions	One (1) space per each 100 square feet of gross floor area for the first 1000 square feet and 1 space for each 200 additional square feet of gross floor area
Bars, Nightclubs and Private Entertainment Clubs	One (1) space for each employee during the shift of greatest employment plus one (1) space for each three (3) seats
Bus Station	Four (4) spaces for each loading station, plus one (1) space for each employee during the shift with greatest employment
Cemeteries	One (1) space per employee during the shift of greatest employment plus parking on private internal roads with room for cars to pass parked cars on said roads
Charitable and Welfare Organizations	One (1) space per employee during the shift with greatest employment plus one (1) space for each three hundred (300) square feet of gross floor area
Churches, Synagogues and Other Places of Worship	One (1) space per employee during the greatest employment plus one (1) space for (4) seats in the sanctuary
Colleges, Vocational and Professional Schools	One (1) space for each three (3) students plus per employee during the shifts of greatest employment
Convenience Store	One (1) space for each two hundred (200) square feet of gross floor area plus two (2) spaces for each fuel nozzle
Customary Home Occupations	One (1) space plus the number of spaces required for the residential use
Day Care Centers, Nurseries, Pre-Schools and Kindergartens	One (1) space per employee during the shift of greatest employment plus one (1) space per ten (10) children of certification capacity
Dwellings, One-Family	Two (2) spaces for each one (1) dwelling unit
Dwellings, Two-Family	Two (2) spaces for each one (1) dwelling unit

Dwellings, Multi-Family (except those dwellings designed specifically for elderly and/or handicapped persons)	Two (2) spaces for each one or two bedroom dwelling unit and three (3) spaces for each three or more bedroom dwelling unit
Dwellings, Multi-Family (designed specifically for elderly and/or handicapped persons)	1.25 spaces per dwelling unit
Electronic gaming operation	One (1) space per 1.5 gaming terminals, plus 1 space per two (2) employees
Elementary and Junior High School	One and three-fourths (1.75) spaces for each room used for instruction or administration, or one (1) space for each four (4) seats used for assembly purposes, whichever is greater
Family Care Homes	One (1) space for each three (3) employees (total employees), plus one (1) for each two (2) residents
Funeral Homes	One (1) space for each four (4) seats in the chapel or chapels, plus two (2) spaces for each three (3) employees, plus one (1) space for each vehicle used in the operation. In addition, off-street parking area shall be provided, on the site, to accommodate a minimum of thirty (30) passenger vehicles for the purpose of forming a funeral procession. In the event that on-site area is not available, such off-street area may be provided within three hundred (300) feet of the funeral home, as measured to the nearest property lines
Furniture and Appliance Stores, Household Equipment Repair Shops; Showroom of a plumber, decorator, electrician or similar trade; Laundry and Machinery Sales	One (1) space per eight hundred (800) square feet of gross floor area plus one (1) space each for the largest number of employees per shift
Golf Courses	One (1) space for the largest number of employees per shift

	plus four (4) spaces per hole plus one (1) space for each vehicle used in the operation (excluding golf carts)
Hospitals	Two (2) spaces per patient bed (not including bassinets)
Laboratories, Analytical, and Testing	One (1) space per employee during the shift with greatest employment plus one (1) space for each eight hundred (800) square feet of gross floor area
Lumber or Building Material Yards	One (1) space per employee during employment plus one (1) space for each five hundred (500) square feet of retail sales space or showroom floor area plus one (1) space for each vehicle used in the operation
Manufacturing, Processing or Fabrication Plants, Offices for Building Trades	One (1) space per employee during the employment
Medical and Dental Offices and Clinics	Two (2) spaces per patient treatment or examination room (or similar patient treatment space) plus one (1) space per doctor practicing at the clinic or office plus one (1) space per each additional employee during the shift of greatest employment.
Motels and Hotels The number of Required off-street parking spaces for restaurants, lounges and banquet facilities located within a motel and hotel shall be computed separately)	One (1) space for each guest room or suite plus one (1) space for each employee on the shift of maximum employment
Museums and Art Galleries	One (1) space for each three-hundred (300) square feet of exhibit space, plus one (1) space for each employee during the shift of greatest employment
Nursing Homes, Rest Homes, Homes for the aged	Three (3) spaces for each five (5) beds
Offices, Professional,	One (1) space for each two hundred (200) square feet of

Business, or Public, (excluding medical and dental offices and clinics)	gross floor area
Places of Public Assembly not other- wise listed such as auditoriums and stadiums and not constructed pursuant to a permit authorizing the construction of a public community center, public or private school, or a residential development	One (1) space for each four (4) seats of seating capacity
Post Office	One (1) space per employee during the shift of greatest employment plus one (1) space for each three hundred (300) square feet of gross floor area
Private Residential Quarters	One (1) space per private residential quarters
Public Safety Stations	One (1) space for each employee during the shift of greatest employment
Radio and Television Stations	One (1) space for each three-hundred (300) square feet of gross floor area plus one (1) space for each four (4) seats in viewing areas, plus one (1) space for each vehicle used in the operation
Recreation Facilities, privately owned, outdoor, such as athletic fields, swimming or tennis clubs, amusement parks, not otherwise listed and not constructed pursuant to a permit author- izing the construction of some residential development	One (1) space per 200 square feet of area within enclosed within enclosed buildings plus one (1) space for each four (4) persons that accommodate when used to the maximum capacity

Recreation Facilities, publicly owned, outdoor, such as athletic fields, tennis courts, swimming pools, playgrounds, parks, etc., not otherwise listed and not constructed pursuant to a permit authorizing the construction of another use such as a school	One (1) space per 200 square feet of area within buildings plus one (1) space for three (3) persons that the outdoor facilities are designed to accommodate when used to the maximum capacity
Recreation Facilities, indoor, not otherwise listed (e.g., gymnasium community center, physical fitness centers or clubs, pinball or video or arcade game centers, etc.)	One (1) space for every three (3) persons that the facilities are designed to accommodate when fully utilized (if they can be measured in such a fashion - example, tennis courts plus one (1) space per 200 square feet of gross floor area used in a manner not susceptible to such calculation, or one (1) space for three (3) seats (fixed in the largest assembly room) whichever is greatest.
Restaurants	One (1) space for each employee during the shift of greatest (including fast employment plus one (1) space for each three (3) restaurant food restaurants) seats, plus reservoir lane capacity equal to five (5) spaces per drive-in window
Retail Business and Consumer Service Outlets (except as noted herein)	One (1) space for each 200 square feet of gross floor area
Sales Lots and Showrooms (auto-mobile and mobile home	Four (4) spaces for each salesperson plus one (1) space per employee during the shift with greatest employment. These spaces shall be in addition to other spaces used to park all vehicles for sale or on display and in addition to spaces required in this section for automobile repair use classification where sales and repairs are provided by the same establishment
Senior High School	Five (5) spaces for each room used for instruction or

	administration or one (1) space for each four (4) seats used for assembly purposes, whichever is greater. Assembly purposes shall be deemed to include the capacity of either indoor or outdoor assembly, whichever is greater.
Service Stations	One space located away from pumps for each fuel pump nozzle plus two (2) spaces for each service bay plus one (1) space for each employee during the shift of greatest employment, plus sufficient parking area to accommodate vehicles at pumps without interfering with other parking spaces
Shopping Centers	One (1) space for each two hundred (200) square feet of gross floor area for the first 500,000 square feet Plus one space per additional 300 square feet above the first 500,000 square feet but, excluding uses whose off-street parking requirements are listed separately. Off-street parking for these uses shall be computed separately. Common pedestrian walkway areas inside enclosed shopping malls are not counted in gross floor area, however such areas occupied by sales establishments and open courts where prepared food is sold and consumed shall be counted
Theaters, Indoor	One (1) space for each employee during the shift of greatest employment plus one (1) space for each three (3) seats
Wholesale Sales	One (1) space per employee during shift of greatest employment plus, one space per five hundred (500) square feet of office area, plus one space for each vehicle used in the operation, plus one space for each five hundred (500) square feet devoted to on-premises sales such as customer self-service areas and/or showrooms and sales counters
Video Tape Rental Shops	One (1) space per one hundred (100) square feet of gross floor area for the first one thousand (1,000) square feet and one (1) space for each additional one hundred and fifty (150) square feet of gross floor area plus one (1) space for each employee on the shift of greatest employment

Section 10.2 Off-Street Loading Requirements

10.2.1 Purpose

In order to assure a proper and uniform development of off-street loading areas and to relieve traffic congestion in the streets, the off-street loading requirements set forth in Section 10.2.2 will apply in all zoning districts except the B-1 District.

These requirements will apply to new structures and uses and to additions to existing structure and uses.

10.2.2 Minimum Off-Street Loading Space Requirements

The following minimum loading space requirements shall apply for the appropriate use:

<u>Type Of Use</u>	<u>Gross Floor Area (Sq Ft)</u>	<u>Required Number Of Loading Spaces</u>
Office, Restaurant Hotel or Motel	0 - 5,000	None
	5,000 - 49,000	1
	50,000 - 99,000	2
	100,000+	2 plus 1 for each 100,000 square feet of gross floor area in excess of 100,000 square feet
Other Commercial Establish- ments Shopping Centers or Industrial Uses	0 - 5,000	None
	5,000 - 19,999	1
	20,000 - 49,999	2
	50,000 - 79,999	3
	80,000 - 99,999	4
	100,000 - 149,000	5
	150,000+	5 plus one for each 50,000 square feet of gross floor area in excess of 150,000 sq. ft.

10.2.3 Design Of Loading Spaces

Off-street loading spaces must be designed and constructed so that all maneuvering to park and unpark vehicles for loading and unloading can take place entirely within the property lines of the premises. Loading spaces must be designed so as to not to interfere with the normal movement of vehicles and pedestrians on public rights-of-way. Where feasible, off-street loading shall be located in the rear yard.

Each loading berth shall have a paved surface and be a minimum of twelve (12) feet in width and thirty-five (35) feet in length. Each such berth shall also have a minimum vertical clearance of fourteen (14) feet. For any use that is required to furnish three (3) or more loading berths, at least one (1) of every three (3) berths shall have a minimum width of twelve (12) feet, minimum length of sixty-five (65)

feet and a minimum vertical clearance of fourteen (14) feet.

Section 10.3 Conditional Use Permits For Off-Street Parking in Residential Zones

In order to construct an off-street parking lot in a Residential (R) District, a conditional use permit must first be issued by the City Council in accordance with Part 13 of this Ordinance. All such parking lots shall meet the following minimum design criteria.

- a. Parking areas shall be used for the parking of automobiles only, with no sales, storage, repair work, dismantling, or servicing of any kind permitted.
- b. All required parking spaces shall be of such design and located so as to be convenient and readily usable by the patrons.
- c. Sufficient area shall be provided within the property lines so that all vehicles may enter and leave in a forward motion.
- d. Screening in accordance with Section 7.2 shall be required whenever a parking lot abuts or is located opposite a Residential (R) District.
- e. All parking lots shall be constructed in such a manner that contamination by dust or dust clouds will not exist. This is to be accomplished by concrete, asphalt or black top surfacing.
- f. If nighttime parking is to be permitted it shall be lighted with the provision that the lights shall be shielded so as to prevent direct beaming into adjoining areas located in a Residential (R) District.

PART 11

RESERVED – Deleted July 8, 2002 entire section deleted

PART 12

MANUFACTURED HOME PARKS

Section 12.1 Compliance with This Part

All new manufactured home parks or expansions of existing manufactured home parks shall be developed in accordance with the Standards of this Part.

Section 12.2 Manufactured Home Park Application Process

Manufactured Home Parks are conditional uses and are subject to the issuance of a conditional use permit by the City Council. In addition to the information required in Section 13.3, any conditional use permit application for a manufactured home park shall also contain the following information:

- a. The name of the manufactured home park, the names and addresses of the owner(s) and the designer of the park, date, approximate north arrow, and scale, and the boundary line survey of the tract with accurate linear and angular dimensions drawn to scale by a registered surveyor or engineer.
- b. The locations of existing and platted property lines, streets, buildings, water courses, railroads, bridges, known gravesite areas, water mains, sewers, culverts, drainpipes and any utility easements, both on the land to be developed as a manufactured home park and on land immediately adjoining. The names of adjoining subdivisions and the names of owners of all adjoining parcels of land shall be noted.
- c. The names, proposed location and approximate dimensions of proposed streets, entrances, exits, walkways, easements, recreation areas, parking areas, parks and other spaces, reservations, mobile home spaces (with area calculations shown) and building lines (with setback distances shown). See 12.3.3 for staking requirements where individual septic tanks will be used.
- d. Plans of proposed utility layouts (sewer lines, water lines, hydrants, storm drainage, etc.) showing feasible connections to existing and proposed utility systems; plan for electric lighting; and the location and number of trash dumpsters and mail boxes.
- e. Proposed screening, including walls, fences or planting areas as well as treatment of any existing natural features.

- f. Delineation of areas within the regulatory floodplain as shown on the official Flood Hazard Boundary Maps.
- g. Proposed number and location of signs including both park identification signs and space identification numbers.
- h. Proposed phasing, if any, and approximate completion time of the project.
- i. The above items 1 through 8 shall be submitted on a plan drawn to a scale of one (1) inch equals fifty (50) feet or one (1) inch equals one hundred (100) feet on sheet(s) not exceeding twenty-four (24) inches by thirty-six (36) inches. Twenty (20) copies shall be submitted. The Zoning Administrator may require additional copies if outside agency review is deemed appropriate.
- j. A management plan describing at a minimum how the common facilities will be maintained and how the park will be maintained in accordance with Section 12.3.28 of this Ordinance.
- k. If a conditional use permit is required the applicant's site plan and application is submitted in lieu of the application required by Section 13.3(a) of this Ordinance provided the site plan contains any additional information required by said Section.

Section 12.3 Standards

This section sets forth the standards required for all new manufactured home parks and expansions of existing manufactured home/mobile home/trailer parks.

12.3.1 Occupancy

There must be at least five (5) improved manufactured home spaces at first occupancy. No manufactured home space shall be occupied, nor certificate of compliance issued unless the requirements of this Ordinance have been met.

12.3.2 Minimum Park Area

All manufactured home parks shall have a gross land area of at least three (3) acres.

12.3.3 Space Sizes and Staking

All manufactured homes within the park shall be located in designated manufactured home spaces. Each manufactured home space created on or after January 14, 2002 shall be located on a space that has a minimum area of forty thousand (40,000) square feet.

- a. The above space sizes are to be deemed the minimum size requirements and may be increased due to requirements for placement of well and septic tank systems (such as soil conditions and separation distances), the topography of the land or other factors. The applicant shall indicate on the application the specific number of bedrooms per manufactured home for which the septic tank system should be evaluated.
- b. Where individual septic tanks will be used, each manufactured home space shall have all corners marked during the application review and construction phase of the project. Failure to have each space clearly identified will slow the review process.

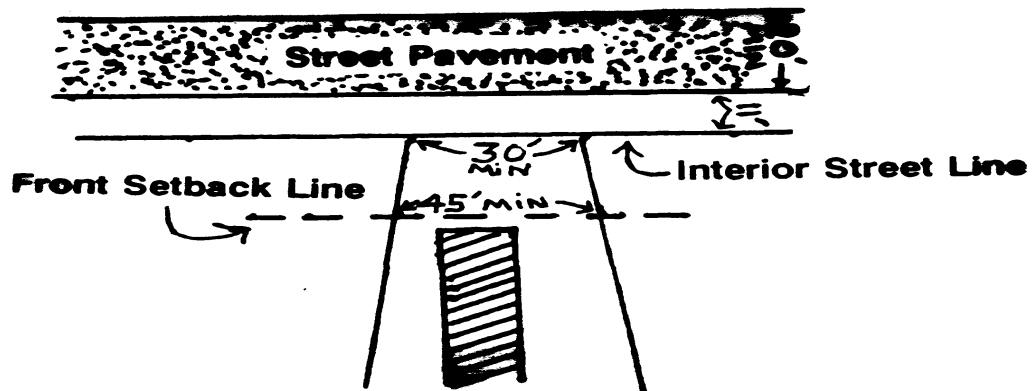
12.3.4 Suitability of Land for Spaces

Each manufactured home space shall be located on ground not located within the one hundred (100) year flood plain as established by maps published by the Federal Emergency Management Agency. No manufactured home shall be placed on land having excessive slope or other characteristics making the land unsuitable for placement of manufactured homes. Each manufactured home space shall be graded so as to prevent any water from ponding or accumulating on the space.

12.3.5 Space Widths

Each manufactured home space shall be at least thirty (30) feet in width at the interior street line and forty-five (45) feet in width at the front yard setback line. The interior street line is a line eleven (11) feet away from the edge of pavement and running parallel thereto. Exception may be made to the minimum width at the street for panhandle spaces, however all setbacks must be met and no portion of the panhandle may be used for measuring setbacks.

Figure 12.3.5



12.3.6 Setbacks

Minimum front, side and rear yards shall be provided as follows for each space. (Note: Where a required screening area as provided in Section 5.2 of this Ordinance lies between the manufactured home space and the property line or street right-of-way (a street other than an interior manufactured home park street), the setback shall be measured from the edge of the screen nearest the mobile home):

1. The minimum setback for any structure within a manufactured home park from a publicly maintained street right-of-way line or from any property line shall be forty (40) feet.
2. Otherwise, all manufactured home spaces shall have the following minimum setbacks (unless otherwise specified):
 - Front Setback (from interior streets). Twenty (20) feet (Note: 12.3.15(e))
 - Side Setback. Ten (10) feet minimum on one side, but both side yards must total to a combined thirty (30) feet.
 - Rear Setback. Fifteen (15) feet.

Any manufactured home placed into a manufactured home park on or after January 14, 2002 must comply with all setback requirements.

12.3.7 Location of Accessory Structures and Common Structures

Structures accessory to a particular manufactured home shall be located only on the lot containing that manufactured home. All such structures shall be **(i)** residential in character; **(ii)** be located only in the side or rear yards; **(iii)** be no closer than five (5) feet from the mobile home space boundary and no closer than ten (10) feet from any mobile home; and **(iv)** if located in the rear yard such structure(s) shall occupy no more than thirty percent (30%) of the area of the rear yard. Provided however, for carports not exceeding two (2) car spaces the only requirements shall be that such structures observe the same front yard setback as required for the mobile home and that such structures be located no closer than five (5) feet from any property line. Accessory structures of benefit to all residents of the manufactured home park shall be permitted within the park. Said structures (i.e., community pools, club houses, etc.) shall be located at least twenty (20) feet from any interior street line and thirty (30) feet from any manufactured homes located within the park.

12.3.8 Manufactured Home Standards

No manufactured home shall be placed in a manufactured home park unless it meets the standards of either Class A Manufactured Home or Class B Manufactured Home as defined in Part 4 of this Ordinance.

12.3.9 Stand, Underpinning and Tiedown

The location of each manufactured home stand must be at an elevation, distance and angle in relation to the adjacent access drive so that placement and removal of the manufactured home is practical by means of customary moving equipment. All manufactured homes shall have continuous brick, cinder block, concrete block, stucco, stone, or other masonry-type underpinning or other non-reflective skirting specifically manufactured for manufactured homes, or pressure treated wood (but plain standard surface pressure treated plywood is not acceptable), unpierced except for required ventilation and an access door. Such underpinning or skirting shall be installed under all elements of the manufactured home. Each manufactured home in the park shall conform to North Carolina Department of Insurance Standards for tie down requirements.

12.3.10 Steps and Patios

All manufactured homes within the park shall be equipped with two (2) sets of steps. All manufactured home spaces shall contain a manufactured home patio. The patio shall be constructed of four (4) inch thick concrete and shall be at least sixty-four (64) square feet in area and shall be located at the front entrance to each manufactured home. In lieu of concrete patios, raised decks constructed of pressure treated wood and in accordance with the North Carolina Building Code and at least sixty-four (64) square feet in area may be permitted.

12.3.11 Space Numbers

Each manufactured home space shall have a space number. Numerals shall be at least three and one-half (3-1/2) inches in height and shall be placed on a post or stand made of durable material between eighteen (18) and twenty-four (24) inches above the ground and placed near each space driveway at least four (4) feet but not greater than fifteen (15) feet from the nearest edge of pavement of the interior street. The number shall be set at a location as to clearly indicate the space to which it is assigned.

12.3.12 Public Road Frontage of Park

All manufactured home parks shall have a minimum public road frontage of fifty (50) feet on at least one street.

12.3.13 Ingress and Egress

Each manufactured home park shall have direct access onto a public road. Manufactured home parks shall not be located on through lots unless the park is designed in a manner which does not encourage motorists from using the park as a means of traveling from one public street to another. Parks having less than sixty (60) spaces shall have at least one designated area that contains both an

entrance and an exit to the park. Parks having sixty (60) or more spaces shall have one additional separate designated area with both an entrance and an exit to the park for each sixty (60) or more spaces or fraction thereof.

12.3.14 Park Identification Signs

All manufactured home parks shall have at least one ground mounted park identification sign but shall not have more than one park identification sign per public street front entrance. Park identification signs shall not exceed thirty-six (36) square feet in sign face area or five (5) feet in height. Each manufactured home park shall have a name and the name of the park shall be shown on the identification sign.

12.3.15 Interior Streets, Drainage, and Markings

No structure within a manufactured home park shall have direct access to a public street.

Access to all manufactured homes and accessory structures within the manufactured home park shall be made using internal streets. All internal streets within a manufactured home park shall be privately owned and maintained. All such streets shall be paved to a minimum width of twenty (20) feet. Specific construction standards for internal streets are as follows:

- a. A base course of at least four (4) inches of compacted crushed stone must be applied for the entire required paved width of drives.
- b. A surface course of at least one and one-half (1-1/2) inches of plant mixed asphalt or Class "A" bituminous surface must be applied for the entire required paved width of drives in conformance with North Carolina State Department of Transportation Specifications for subdivision roads.
- c. Permanent street names shall be assigned to all internal streets. Such street names shall not be similar in name to any existing streets in the Cherryville Planning and Zoning Jurisdiction or postal zone. Permanent street name signs shall also be installed at street intersections within the park.
- d. Permanent traffic control signs shall be installed within the park. Such signs shall include at a minimum the following:
 - (1) Stop sign(s) where park streets access public roads;
 - (2) Stop sign(s) at the intersection of interior streets, (it is recommended that all four-way intersections be controlled by four-way stop signs);

- (3) "No Parking" signs along interior streets at intervals sufficient to be readable except where streets have been paved to a width of at least thirty (30) feet.
 - (4) One way streets shall be marked as such at appropriate intervals and "do not enter" signs shall be posted where streets become one way or where streets intersect with one way streets.
- e. Each street shall have a graded and grassed shoulder on both sides and grassed (or stabilized with stone riprap) drainage ditch on either side. The width and slopes of the shoulder and drainage ditch shall meet the minimum construction standards of the N.C. Department of Transportation (NCDOT), Division of Highways for Subdivision Roads. Where terrain will not permit a drainage ditch, a continuous slope of the one (1) foot of vertical distance for each three (3) feet of horizontal distance, following a six (6) foot wide shoulder with a one in six slope (one (1) foot in elevation for each six (6) feet in width), will be permitted. Neither the street pavement nor the ditch/shoulder area shall be within any required area of a manufactured home space or required manufactured home setbacks. Where drive accesses cross the ditch, a pipe of at least twelve (12) inches in diameter shall be placed under the drive along the course of the ditch.

In lieu of non curb and gutter streets the developer may provide curb and gutter streets; but such streets, together with all storm drainage appurtenances, shall meet all the minimum construction standards for subdivision roads of the N.C. Department of Transportation, Division of Highways.
- f. The manufactured home park must be designed and graded in such a manner as to allow for the adequate runoff of storm water. Storm drains must be provided with sufficient inlets located at points of surface water accumulation to adequately intercept the flow of surface storm waters.
- g. Speed reduction bumps on paved internal streets are permissible, but they shall be painted and appropriate signs indicating the bump must be placed along the street.
- h. All dead-end internal streets that provide access to three (3) or more manufactured homes shall be provided with a permanent turn-around. All such turnarounds shall have a minimum paved surface diameter of seventy (70) feet.
- i. Streets and roads within the manufactured home park shall intersect as nearly as possible at right angles, and no street shall intersect at an angle of less than sixty (60) degrees. Where streets intersect with a State maintained road, the design standards of NCDOT shall apply.

- j. Maintenance of all internal streets, signage, and all drainage facilities shall be the responsibility of the owner of the manufactured home park. Such street shall be maintained in a manner to be free from pot holes, breaks in the pavement, rough surfaces, ponding of water during rainy periods, excessive washing of drainage ditches, and other associated problems which would impede or cause hazards to motor vehicles.

12.3.16 Parking

At least two (2) off-street parking spaces with not less than four (4) inches of crushed stone or other suitable material (such as asphalt paving or bituminous surface treatment (BST) paving) on a well compacted sub-base shall be provided for each manufactured home space. Required parking spaces may be located in the required front or side yards of the manufactured home space. Parking spaces shall be located outside the roadway, shoulder, or drainage ditches. One or more separate common visitor parking areas may be located within the park but shall not be located within any manufactured home space, roadway, shoulder, drainage ditch, or required buffer or open space recreation areas.

Utility lots designated for the storage of campers, boats, vacant mobile homes, etc. may be located within the manufactured home park in designated areas. All vacant manufactured homes not then intended for occupancy shall be located in said lot(s). A maximum of one vacant manufactured home per ten (10) manufactured home spaces may be stored on said lot(s). All such lots shall meet all screening requirements in accordance with Section 5.2 of this Ordinance.

12.3.17 Trash Facilities

At least one (1) covered garbage or trash container with a twenty-four (24) gallon minimum capacity, shall be provided for each manufactured home. Containers shall be placed on racks and such racks shall be located within the manufactured home park at a point that is readily accessible for collection. All refuse must be placed in refuse containers and it shall be the responsibility of the park operator to provide sufficient container capacity to meet the needs of each household. In lieu of cans and racks, covered roll out trash/garbage containers may be provided. In lieu of requiring individual garbage and trash containers for each manufactured home, trash dumpsters may be installed in convenient locations, but not on any individual manufactured home space. If dumpsters are provided, each dumpster shall be located at least fifty (50) feet from any property line or public street right-of-way and at least forty (40) feet from any manufactured home. All such dumpsters shall be materially screened from any adjacent manufactured home in the park. It shall be the responsibility of the manufactured home park owner or operator to pick up trash from said containers or dumpsters at least once per week.

The owner or operator shall also be responsible for hauling and disposing of said trash in accordance with all County and State regulations. The burning of refuse within the manufactured home park is not permitted.

In lieu of the owner providing refuse pick-up the owner may request that, if the manufactured home park is located in the City limits, the City provide pick-up by use of standard City roll out containers. However, in such case the City may require street construction standards in excess of those set forth in 11.3.15 in terms of stone base and pavement thickness, pavement widths and street design/alignment in order that City refuse trucks can be accommodated.

12.3.18 Lighting

Manufactured home parks which contain over five (5) manufactured home spaces or contain more than one internal street shall contain street lights throughout the manufactured home park. Such lights shall be located at all internal street intersections, at the intersection of any internal street and a public street and elsewhere in the park at a maximum of three hundred (300) feet intervals.

12.3.19 Electric, Telephone and Cable Television Utilities

Each manufactured home space shall have individual electric and telephone service connections provided.

All electric, telephone, and cable television, and other utility lines shall be placed underground.

Each manufactured home must have an individual metered connection to an electric supply and must have an approved fuse disconnect box at the metered location. All wires from meter to manufactured home must be buried underground cable in conformance with the North Carolina Electrical Code.

12.3.20 Mailboxes

Spaces within the manufactured home park shall be provided for cluster mailboxes. Such cluster mailboxes, approved by the United States Postal Service, shall be located at convenient places within the park. Individually owned and located mailboxes shall not be allowed. All cluster mailboxes shall be located within the manufactured home park and shall not front directly on any public road nor be located within any designated manufactured home space. At least one (1) mailbox per manufactured home space shall be provided and the residents of the manufactured home occupying that space shall be provided with a key to open and close the corresponding mailbox. At least one separate parking space shall be provided adjacent to each cluster mailbox for each twenty-five (25) boxes in the cluster.

12.3.21 Administrative Office

One manufactured home may be used solely as an administrative office within the park or an administrative office may be located in a manufactured home that is used as a residence by the resident manager. An administrative office is not required.

12.3.22 Water Service

An accessible, adequate, safe and potable supply of water shall be provided in each manufactured home park. Where a municipal or county water supply is available, connection shall be made thereto and its supply used exclusively.

When municipal or county water supply is not available, adequate water supply shall be developed and its supply used exclusively, in accordance with the standards of the State of North Carolina and the Gaston County Health Department. Any water supply must be capable of providing three hundred (300) gallons of water per day per manufactured home space.

Each space shall be provided a minimum three fourth (3/4) inch size copper or PVC water service line.

12.3.23 Sewage Facilities

- a. Adequate and safe sewage disposal facilities shall be provided in all manufactured home parks. Collection systems and sewage treatment plants complying with the requirements of the North Carolina Department of Health and Environment and the County Health Department shall be provided. Individual septic tank systems are permissible in accordance with the requirement of the County Health Department's Sewage Disposal Regulations. There shall be no more than one (1) manufactured home connected to an individual septic tank.

Each manufactured home space shall be provided with at least a three (3) inch PVC or ABS, Schedule 40 or equivalent sewer riser.

A concrete apron shall be installed around all sewer connection pipes for support and protection. The sewer riser pipe shall be located on each space so that the sewer connection is located a distance of at least one hundred (100) feet or greater from any ground water supply.

All material used for sewer connections shall be semi-rigid, corrosion resistant, nonabsorbent, and durable. The inner surface shall be smooth.

A clean-out shall be provided at each space. Surface drainage shall be diverted away from the sewer connection. The sewer connection shall extend at least four (4) inches above ground elevation.

- b. Community sewage disposal systems (commonly referred to as package plants), as permitted by the State of North Carolina, shall be an acceptable method of disposal of residential sewage for manufactured home parks within the jurisdiction of this Ordinance when connection to a publicly owned and maintained sewer system is not possible. When connection to such publicly owned and maintained sewer system is possible, all manufactured homes within the manufactured home park shall be connected to said system. The following information must be submitted when a sewage package plant is proposed.

The developer shall indicate on the plans that a sewage package plant is being proposed for the manufactured home park, and show on the preliminary plan the following:

- (1) Size and location of the package treatment plant.
 - (2) All proposed sewer lines, including:
 - location and line size of gravity lines
 - location and line size of force main
 - location and size of pump stations
 - (3) Location of discharge point into surface water stream.
 - (4) All associated easements and rights-of-way.
- c. The developer shall provide a copy of the State Permit Application to the City Zoning Administrator and the County Health Department at the time of application.
- d. The developer shall submit at the time the application for a permit is submitted to the State, the following information:
- (1) Name of owner and licensed operator of the plant and name of the licensed firm that will operate the package plant, if different from the owner.
 - (2) Amount of liability insurance required for operation of the system.
 - (3) Name of owner and responsible party for the package plant.
 - (4) Other pertinent information.

- e. The developer shall submit the following, upon completion:
- (1) A set of as-built plans and drawings, certified by the project engineer for the package treatment plant and all sewer lines, pump stations and other devices used in the sewer system.
 - (2) Operation and maintenance agreements for:
 - the package treatment plant
 - the sewer lines and other devices which are a part of the sewer system
 - (3) Copy of the executed and notarized agreement(s) for the ownership and maintenance of the package plant and sewer lines.
 - (4) Copy of insurance liability riders, required by the State, pertaining to the operation of the package plant.
 - (5) Copy of the approved State Permit, along with any and all conditions set forth in the operating permit.
 - (6) Copies of other agreements and information for plans pertaining to the maintenance and operation of the sewer system.
- (f) The package plant shall be operated and maintained in accordance with the approved permit form the State of North Carolina. In addition to the operational requirements of the State Permit, the owner or operator of the package plant shall maintain a daily inspection log of visits to the package plant and shall include the following:
- (1) date and time of inspection
 - (2) signature of operator making inspection
 - (3) notation of any problem and corrective action taken
- A copy of this log shall be submitted monthly to the Gaston County Health Department by the tenth (10th) day of the following month. Failure to submit the log report will be deemed a violation of this Ordinance.
- g. Manufactured home park sewer systems using package plants as the main treatment facility should be designed to accommodate the eventual connection to a public sewer system at the time that main outfall lines are placed in areas serving the manufactured home park.

12.3.24 Screening

All manufactured home parks shall be screened from all adjoining properties and public streets. Such screening shall be located within the manufactured home park and shall materially screen all structures within the manufactured home park from all adjacent properties and public streets. All manufactured home setbacks shall be measured from the edge of the screened area nearest the manufactured home.

Required screening shall be installed and maintained in conformance with the standards set forth in Section 5.2 of this Ordinance, provided however, no wall or fence or planted berm shall be used unless the applicant proposes such wall, fence, or berm as a supplement to a planted screen installed in accordance with Subsection 5.2.3 Paragraph A of this Ordinance.

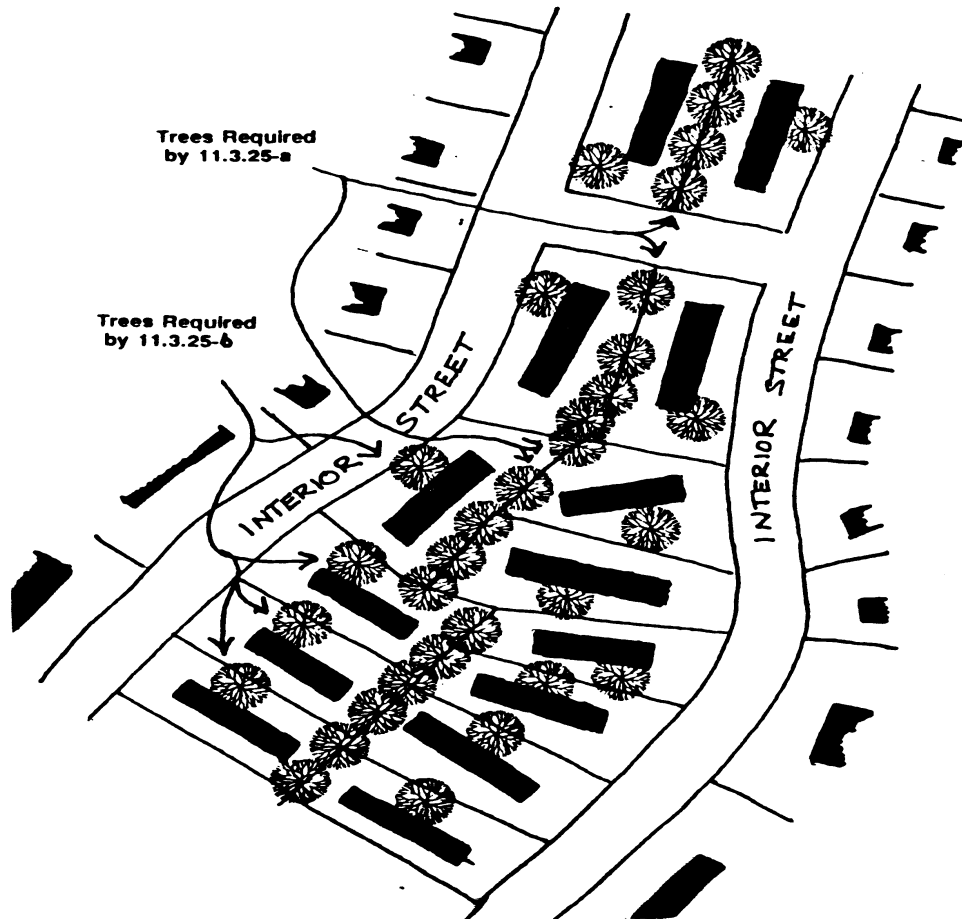
12.3.25 Interior Landscaping

Landscaping inside the manufactured home park shall be provided at locations within the park as follows:

- a. Where manufactured home spaces share an interior rear space (lot) line a row of trees shall be planted. At least four (4) trees per one hundred (100) linear feet shall be planted and at least fifty (50) percent of said trees must be large trees. These trees may be planted within either manufactured home space within five (5) feet of the shared rear space line.
- b. In addition to trees required by 12.3.25a, on each space there shall be provided at least one large tree. Said tree shall be located at least eight (8) feet from any rear space line and outside any interior street right-of-way.

Figure 12.3.25 illustrates the requirements of Subsection 12.3.25. Where any existing trees can contribute to meeting the requirements the applicant is encouraged to use them in lieu of new plant materials provided the spirit and intent of Subsection 12.3.25 are met.

FIGURE 12.3.25



12.3.26 Open Space Areas

Open space areas are required as follows for parks having spaces smaller than 10,000 square feet:

- a. None of the following may be counted as an open space area:
 - (1) Any portion of a manufactured home space;
 - (2) Any parking areas or any area used as a utility lot as set forth in Subsection 12.3.16;
 - (3) Any required street, ditch or shoulder area, except that traffic medians and islands designated as special landscape areas may be counted as open space areas;

- (4) Any land occupied by a building, swimming pool, tennis court or other structure;
 - (5) Any minimum screen area required by Section 5.2.3a;
 - (6) Any area designated for common trash facilities.
- b. Open space areas may consist only of either one or more of the following:
- (1) Buffer areas in addition to any minimum screen areas required by Section 5.2.3a;
 - (2) Natural wooded areas;
 - (3) Open fields or lawns;
 - (4) Garden plots;
 - (5) Special landscaped areas; containing plant material such as traffic islands, medians and flower gardens;
 - (6) Recreation areas in addition to any minimum recreation area(s) required by Subsection 12.3.27.
- c. The amount of required open space area shall be calculated as follows:

<u>For Each Manufactured Home Space In The Following Space Size Category:</u>	<u>Amount Of Area To Be Designated For or Open Space:</u>
9,000 to 9,999 sq. ft	100 sq. ft
8,000 to 8,999 sq. ft	150 sq. ft
7,000 to 7,999 sq. ft	250 sq. ft
6,000 to 6,999 sq. ft	500 sq. ft
5,000 to 5,999 sq. ft	1000 sq. ft

EXCEPTION: Where the total open space area required for the manufactured home park totals less than 2,000 square feet according to the above formula no open space area shall be required.

- d. Open space areas shall be well-maintained by the park owner to prevent the over-growth of plant material and or other conditions which could create unsafe or unhealthy conditions for park residents or adjoining property owners.
- e. The designated open space area within a manufactured home park may consist of a single area or multiple areas.

12.3.27 Recreation Area(s)

This Section requiring designated recreation areas shall only apply to manufactured home parks having ten (10) or more manufactured home spaces less than nine thousand (9,000) square feet in size. Where the application is for an enlargement of an existing manufactured home park, the existing spaces shall be counted for determining the threshold for providing recreation areas and for determining the amount of recreation area required. In such cases, any recreation areas within the existing park shall also be counted toward meeting the requirements of this section.

The total minimum area to be designated within the park as recreation areas shall be calculated according to the following formula:

<u>For Each Manufactured Home Space In The Following Space Size Category:</u>	<u>Amount Of Area To Be Designated For Recreation:</u>
Below 5,000 sq. ft (this applies only to expansion of existing manufactured home parks)	1,000 sq. ft
5,000 sq. ft to 6,999 sq. ft	500 sq. ft
7,000 sq. ft to 8,999 sq. ft	250 sq. ft

When the calculation of required recreation area according to the above formula is greater than zero but less than ten thousand (10,000) square feet the minimum area required shall be increased to ten thousand (10,000) square feet.

The designated recreation area(s) within a manufactured home park may consist of a single area or multiple areas, however, each manufactured home park must have at least one contiguous recreation area of at least 10,000 square feet and no area designated for recreation purposes shall be less than 1,000 square feet in size. Recreation areas may consist of, but are not limited to, adult and/or child play areas with play apparatus, picnic areas, outdoor exercise facilities, playgrounds, ballfields, shuffleboard courts, volleyball courts, tennis courts, basketball courts, and swimming pools. Unimproved areas or buffer areas shall not be counted as required recreation areas. If a developer elects to provide recreation areas in excess of the amount required by this section, such excess may be counted toward the required open space area as required by Subsection 12.3.26. All recreation areas shall be maintained in good condition for their intended recreation purpose at all times by the manufactured home park owner.

12.3.28 Maintenance

The grounds of a manufactured home park shall be kept free of trash, litter and debris. Grounds, buildings and storage areas shall be properly maintained to prevent infestation by rodents, vermin and insects. All grounds shall have proper drainage to prevent the accumulation of water. It shall be the responsibility of the manufactured home park owner to maintain the manufactured home park in accordance with these standards at all times.

PART 13
CONDITIONAL USES

Section 13.1 Conditional Uses

This Ordinance provides for a number of uses to be located by right in each general purpose zoning district subject to the use meeting certain area, height, yard and off-street parking requirements. In addition to these uses, the Ordinance allows some uses to be allowed in these districts subject to the issuance of a conditional use permit. The purpose of having such "conditional uses" is to insure that they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located.

Section 13.2 Reserved

Section 13.3 Procedures

The procedures for securing a conditional use permit shall be as follows:

- a. Twelve (12) copies of a completed written application for a conditional use permit shall be filed with the Zoning Administrator. The application, as a minimum, shall contain or be accompanied by the following items:
 1. Applicant's full name, address, and telephone number; the property owner's full name, address and telephone number, if different from the applicant.
 2. A scaled boundary survey showing the total acreage, and present zoning classifications for the property (ies) for which the conditional use permit is sought, date and north arrow. On this survey shall be sketched the information required in Sections 13.3(a)(3-8).
 3. All existing easements, rights-of-way and required setbacks for the lot(s) for which the conditional use permit is sought.
 4. Proposed size, layout and setbacks of all proposed structures. For residential uses this shall include the number of units and an outline of the area where all principal and accessory structures will be located. For nonresidential uses, this shall include the approximate gross floor areas of all structures and an outline of the area where the structures will be located.
 5. Traffic, parking and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets.

6. Landscape plan showing proposed screening and landscaping, including location of walls, fences, berms and natural plantings as well as treatment of any existing natural features within the site.
 7. Delineation of areas within the regulatory floodplain as shown on the official Flood Hazard Boundary Maps.
 8. Proposed number, size, type and location of freestanding signs.
 9. Proposed phasing, if any, and approximate completion time of the project.
- b. No application shall be considered complete unless it contain or is accompanied by all items listed in Section 13.3 of this Ordinance and a fee, in accordance with a fee schedule approved by the City Council for the submittal of conditional use permit applications.
 - c. All completed applications shall be submitted to the Zoning Administrator at least fifteen (15) days prior to the Planning Board meeting at which it is to be reviewed. This requirement may be waived by a unanimous vote of the Planning Board membership present at a meeting of the Planning Board occurring less than fifteen (15) days prior to the date of submission. In no case, shall the meeting at which the Planning Board initially reviews the application occur greater than sixty (60) days after the required number of copies of the completed application have been submitted by the applicant to the Zoning Administrator.
 - d. The Planning Board shall have a maximum of forty-five (45) days from the date at which it initially met to review the application to submit its recommendation to the City Council. If a recommendation is not made during said forty-five (45) day period, the application shall be forwarded to the City Council without a recommendation.
 - e. When dealing with the conditional use permit process and with the rezoning of properties to a conditional use district, it may be necessary to request information in addition to that listed in Section 13.3 in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the Planning Board (and/or City Council) may request such additional information of the applicant as it deems necessary.

A request for such additional information shall stay any further consideration of the application by the Planning Board or City Council. This information may include (but not be limited to) the following:

1. Stormwater drainage plan;

2. Existing and proposed topography at four-foot contour intervals or less;
3. The existing and proposed location of all water and sewer lines and fire hydrants intended to serve the proposed development;
4. Proposed number, type, and location of signs;
5. A traffic impact study of the proposed development prepared by a qualified transportation or traffic engineer or planner. The traffic impact study shall include the following information:
 - (a) existing traffic conditions within the study area boundary;
 - (b) traffic volumes generated by the existing and proposed development on the parcel, including the morning peak, afternoon or evening peak, and average daily traffic levels;
 - (c) the distribution of existing and proposed trips through the street network;
 - (d) analyses of the capacities of intersections located within the study area boundary;
 - (e) recommendations for improvements designed to mitigate traffic impacts and to enhance pedestrian access to the development from the public right-of-way; and
 - (f) other pertinent information, including but not limited to noise, and impacts on air quality and other natural resources.

Section 13.4 City Council Decision

Once a recommendation has been received from the Planning Board, or the forty-five (45) day Planning Board review period has expired, the City Council shall schedule a public hearing concerning the application for a conditional use permit. Said public hearing shall be conducted in a quasi-judicial manner. Notice of said public hearing shall be as follows:

- a. A notice shall be published in a newspaper having general circulation in the Cherryville area once a week for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the public hearing. In computing such time, the date of publication is not to be included, but the date of the hearing shall be included.

- b. The City shall conspicuously place a notice in the Cherryville City Hall not less than ten (10) days or more than twenty-five (25) days before the date established for the public hearing.
- c. The City shall conspicuously post a notice on the subject property at least ten (10) days but not more than twenty-five (25) days prior to the public hearing.
- d. At least ten (10) but not more than twenty-five (25) days prior to the public hearing, a notice of the proposed zoning change shall be sent by the City by first class mail to the applicant, the property owner of the property in question (if different than the applicant) and to all contiguous property owners.

If the City Council should find, after conducting a public hearing, that a conditional use permit should be granted, the City Council may impose such additional reasonable and appropriate special conditions upon such conditional use permit, as is deems necessary. Any conditions shall relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development and other matters that the City Council may find appropriate or the petitioner may propose. Such conditions to approval may include dedication of any rights-of-way or easements for streets, water, sewer or other public utilities necessary to serve the proposed development. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the City Council. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found elsewhere in this Ordinance.

13.4.1 Burden of Proof

The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions which Sections 13.4.2(b) and (d) of this Ordinance require. If any person submits evidence allegedly contrary to any of the facts or conditions listed in Sections 13.4.2(a) and (c) of this Ordinance, the burden of proof for overcoming such evidence shall rest with the applicant.

13.4.2 Required Findings for All Conditional Use Permits

The City Council shall issue a conditional use permit only after having evaluated an application and having determined that:

- a. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and

- b. The use meets all required conditions and specifications, and
- c. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
- d. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Cherryville Land Development Plan.

Section 13.5 Additional Review Criteria

The following specific review criteria for each of the following conditional uses shall be addressed by the City Council in addition to those general review criteria set forth in Subsection 13.4.2 (Note: The City Council recognizes that these review criteria may in some respects duplicate the general review criteria set forth in 13.4.2 but that these criteria are provided to more specifically address issues that are particularly critical to certain uses).

13.5.1 Planned Residential Developments

- (a) The location and character of the development will be in keeping with the stated purpose for allowing Planned Residential Developments as set forth in 11.1.1 of this Ordinance.
- (b) The proposed ingress and egress points will not result in a substantial amount of vehicular traffic to be channeled onto adjacent local streets (non collector/non thoroughfare streets).

13.5.2 Manufactured Home Parks

- (a) The proposed ingress and egress points will not result in a substantial amount of vehicular traffic to be channeled onto adjacent local streets (non collector/non thoroughfare streets).
- (b) The manufactured home park will not only meet the minimum screening specifications set forth in this Ordinance but that the result of such screening will be to screen the manufacture home park for view from adjoining properties and adjoining street rights-of-way.

13.5.3 Manufacturing Uses

- (a) The use will not overly impact the ability of the City to collect and/or treat any wastewater generated by the use or the ability of the City to treat and distribute any potable water needed by the use.

- (b) The use will not overly impact (impact beyond capacity) the system of streets serving the use or that improvements will be made to such streets

in consort with the development of said use, the result of which will be adequate handling of the additional traffic generated.

- (c) That not only will the use meet the minimum screening requirements of this Ordinance, but also that such additional screening will be installed, as necessitated by the visual characteristics of the particular use, such that the use will be screened from view of adjoining residential districts, or that the nature of the topography makes the screening from distant view from such residential areas impossible and that other measures such as heavy on-site landscaping will be taken to lessen any near or distant visual impacts.

13.5.4 Reserved

13.5.5 Multi-Family Developments

- (a) The proposed ingress and egress points will not result in a substantial amount of vehicular traffic to be channel onto adjacent local streets (non collector/non thoroughfare streets).

13.5.6 Arcade or Amusement Center or Game Room

- (a) That if such use is not located in a Class C Shopping Center, it will be located no closer than three hundred (300) feet from any Residential (R) District.
- (b) That the hours of operation will be limited to the hours between eight o'clock in the morning (8:00 a.m.) and twelve o'clock midnight (12:00 a.m.).

Section 13.6 Binding Effect

Any conditional use permit so authorized shall be perpetually binding to the property included in such permit unless subsequently changed or amended by the City Council. However, minor changes in the detail of the approved plan which **(a)** will not alter the basic relationship of the proposed development to adjacent property, and **(b)** will not alter the uses permitted or increase the density or intensity of development, and **(c)** will not decrease the off-street parking ratio or reduce the yards provided at the periphery of the site may be made with the approval of the Zoning Administrator.

Section 13.7 Certificate of Compliance

No certificate of compliance shall be issued for any building or land use on a piece of property which has received a conditional use permit unless the building is constructed or used, or the land is developed or used, in conformity with the conditional use permit approved by the City Council. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

Section 13.8 One Year Limitation

If a request for a conditional use permit is denied by the City Council, a similar application for the same property or any portion thereof shall not be filed until the expiration of a twelve (12) month period from the date of the most recent denial by the City Council. This waiting period shall not be applicable where the application for a conditional use permit is substantially different from the application that most previously had been denied.

Section 13.9 Change in Conditional Use Permit

Any request to materially change the conditional use permit once it has been issued by the City Council shall first be reviewed by the Planning Board in accordance with Section 13.3 of this Ordinance. The City Council may thereafter change or amend any previously approved conditional use permit, only after having held a public hearing. Notice of the public hearing shall be in accordance with Section 13.4 of this Ordinance. Amendment by the City Council of a previously issued conditional use permit shall be subject to the same considerations as provided for in Section 13.4 of this Ordinance.

Section 13.10 Implementation of Conditional Use Permit

Unless the City Council issues a conditional use permit which either is specifically exempted from any time constraints or has some other specified time period for implementation, the applicant shall have a period of twelve (12) months from date of issuance of the conditional use permit to secure a building permit for the project. If the applicant shall fail to obtain a building permit within the time allowed, the Zoning Administrator shall notify the applicant of such a finding, and within sixty (60) days of said notification, the Planning Board shall make a recommendation concerning the rescission of the conditional use permit to the City Council. The City Council, after having conducted a public hearing to consider the rescission, may then rescind the conditional use permit, or extend the life of the conditional use permit for a specified period of time. Due notice of said public hearing shall be given as prescribed in Section 13.4 of this Ordinance.

Section 13.11 Changes in Conditional Uses Within Shopping Centers

When there is a change in use in a shopping center and the change is for a use listed as a conditional use in the Zoning District in which the shopping center is located then a conditional use permit is required for the change in use.

PART 14

ZONING ADMINISTRATION

Section 14.1 Zoning Administrator

14.1.1 The Zoning Administrator shall administer the provisions of this Ordinance and any other officials designated by the City Council for the Administration of this Ordinance.

14.1.2 Zoning Inspection: Duties Specified. If the Zoning Administrator shall find that any of the provisions of the Ordinance are being violated, he shall cause notification, in writing, to the owner of the property upon which such violation is located, indicating the nature of the violation and order that necessary actions be taken to correct the deficiency. He shall order discontinuance of illegal uses of land, buildings, or structures, removal of illegal buildings or structures or of illegal additions, alterations or structural changes, discontinuance of any illegal work being done and shall take any other action authorized by this Ordinance to ensure its compliance.

14.1.3 Zoning Permit. No building, sign (except as otherwise indicated) or other structure shall be erected, moved, extended or enlarged or structurally altered without a zoning permit having first been issued. A zoning permit shall also be required to be obtained prior to the excavation or filling of any lot for the construction of any building be commenced, and for any change in use of any principal use. A zoning permit may not be issued by the City unless accompanied by a fee in accordance with a fee schedule established by the City Council.

a. **Expiration of Zoning Permit**

Any zoning permit issued in accordance with this Ordinance will lapse and become invalid unless the work for which it was issued is started within six (6) months of the date of issue, or if the work authorized by it is suspended or abandoned for a period of at least one (1) year. Once a zoning permit has expired, construction work on the lot(s) in question cannot proceed until a new zoning permit has been issued.

b. **Records**

The Zoning Officer shall maintain a record of all zoning permits on file at his office, and copies shall be made available on request to interested parties.

c. **Conditions for Approval**

Zoning permits issued on the basis of dimensional plans approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications. Use, arrangement, or construction that materially differ from that authorized shall be deemed a violation of this Ordinance and shall be punishable as indicated under Section 14.7 of this Ordinance.

d. **Uses Not Requiring a Zoning Permit**

The following uses may be constructed without a zoning permit having first been issued by the Zoning Administrator:

1. Essential Services, Class 1
2. Signs, as specified in Section 9.8, which do not require a zoning permit

Section 14.2 Certificate Of Compliance

No structure hereafter erected, moved, structurally altered or changed in use shall be used or occupied until a certificate of compliance has been issued by the Zoning Administrator [except for those uses indicated in Section 14.1(d)]. Any certificate of compliance issued shall state that the structure or portion of a structure is in compliance with the information stated on the zoning permit. A certificate of compliance shall not be issued unless the proposed use of the structure conforms to the applicable provisions of this Ordinance. If the certificate of compliance is denied, the Zoning Administrator shall state in writing the reasons for refusal and the applicant shall be notified of the refusal. A record of all certificates of compliance shall be kept on file in the office of the Zoning Administrator and copies shall be furnished, on request to all interested parties.

Section 14.3 Designation Of Class A Status For Placement Of Manufactured Homes On Individual Lots

Prior to the issuance of a zoning permit for the placement of a Class A Manufactured Home on an individual lot, the applicant shall first request a designation of Class A status from the Zoning Administrator. In determining whether the proposed manufactured home, when placed on the lot, will meet the requirements for Class A manufactured homes, the applicant shall furnish such information as the Zoning Administrator may request in order to make such determination. Such information may include, but shall not be limited to manufacturer's specifications and drawings, photographs, site plan, and elevation drawings. Prior to issuance of a certificate of occupancy by the Gaston County Building Inspections Department, the owner shall obtain a certificate of compliance

as issued by the Zoning Administrator who shall inspect the manufactured home and determine that it meets all the requirements of a Class A Manufactured Home.

Section 14.4 Site Plan Review Requirements

14.4.1 Statement Of Intent

The purpose of these requirements is to promote the orderly development of certain activities in the City and to ensure that such activities are developed in a manner harmonious with surrounding properties and in the interest of the general public welfare. To achieve these ends and to assure compliance with all applicable requirements of this Ordinance, site plans for certain uses of land shall be submitted to and reviewed by the Zoning Administrator.

14.4.2 Development And Uses Requiring A Site Plan

Site plan review shall be required for all uses and development other than one or two family residential uses and their accessory structures. Provided however, the Zoning Administrator may waive site plan requirements in either of the following cases when he determines that the submission of a site plan would serve no useful purpose:

- a. Accessory structures;
- b. Any enlargement of a building by less than twenty percent (20%) of the existing size provided such enlargement will not result in a requirement for additional parking;
- c. A change in use where no changes are being made, or are required by this Ordinance, to the building coverage, off-street parking access or other external site characteristics.

14.4.3 Procedure For Preparation

- a. Site plans or any portion thereof shall be prepared by an engineer, architect, landscape architect or land surveyor who is authorized by the State of North Carolina to practice as such;
- b. Site plans shall be prepared to a scale of one inch equal to fifty (50) feet (1" = 50') or larger;
- c. A site plan may be prepared in one or more sheets to show clearly the information required by this Section and to facilitate the review and approval of the site plan;
- d. All horizontal dimensions shown on the site plan shall be in feet;

- e. Decimal fractions of a foot shall be to the closest one hundredth of a foot (0.00) and all bearings shall be indicated in degrees, minutes and seconds;
- f. Every site plan shall show the name and address of the owner or developer, the north arrow, the date, the scale of the drawing, and the number of sheets. In addition, it shall reserve a blank space three (3) inches wide by five (5) inches long for City use;
- g. Five (5) copies of the site plan shall be submitted to the Zoning Administrator for review. The Zoning Administrator may request additional copies for outside agency review.

14.4.4 Required Information On Site Plans - All Site Plans Shall Contain The Following Information:

- a. Location of the tract on an inset map at a scale of not less than one inch equal to two thousand feet (1" = 2,000') indicating the scale, the north arrow, and such information as the names and numbers of adjoining roads, streams, subdivisions, or other landmarks, sufficient to clearly identify the location of the property.
- b. A boundary survey of the tract by bearings and distances certified by a licensed land surveyor or engineer.
- c. The location and dimensions of any sidewalks and curbs and gutters to be installed along public street frontages.
- d. All existing property lines; existing streets and easements, their names, numbers and widths; the location and size of existing sanitary and storm sewers, gas lines, water mains, culverts, and other utilities and their easements; existing buildings; existing watercourses; and any other prominent physical features on or adjoining the tract.
- e. Existing zoning and zoning district boundaries on the tract and on adjoining properties.
- f. The present use of all adjoining properties.
- g. Existing topography with contours drawn at two (2) foot intervals. This requirement for topography information may be waived by the Zoning Administrator for developments smaller than one acre in size and where he determine that there is insufficient topography changes to make such information necessary.
- h. Proposed changes in zoning, if any.

- i. The proposed location, general use, number of floors, height and floor area for each building; and, where applicable, the number, size and type of dwelling units.
- j. All off-street loading spaces, parking and walkways indicating the type of surfacing, size, angle of stalls, width of aisles, and a specific schedule showing the number of parking spaces provided.
- k. All proposed water and sanitary sewer facilities, indicating all pipe sizes, types and grades and where connection is to be made to City or other utility systems; all proposed gas lines and other utilities and their easements.
- l. The location, dimensions and character of construction of proposed streets, alleys, driveways; and the location, type and size of vehicular entrances to the site.
- m. Proposed finished grading at two (2) foot intervals and/or by spot elevations. This requirement may be waived in the same manner as in item (g) above.
- n. Provisions for the adequate disposition of natural and storm water indicating location, sizes, types and grades of ditches, catch basins, pipes, and connections to existing drainage systems or suitable outlet.
- o. Provisions for the adequate control of erosion and sedimentation indicating the proposed temporary and permanent control practices and measures that will be implemented during all phases of clearing, grading and construction.
- p. Delineation of any flood hazard areas as shown on the City's FEMA maps.
- q. Location, type, size and height of fencing, retaining walls and screen planting where required under the provisions of this or any other City Ordinance.
- r. The location of wooded areas on the property and the location of trees and wooded areas that will be retained.
- s. The location and dimensions of proposed recreation areas, open space and required amenities and improvements.
- t. The location, character, size, height and orientation of proposed signs and outdoor lighting systems.

14.4.5 Compliance With Other Requirements

All features and elements of the site plan shall in all respects conform to all applicable provisions and standards of the General Statutes of North Carolina; the Ordinances of the City of Cherryville; and the standards and requirements of the North Carolina Department of Transportation and the North Carolina Department of Health and Environment.

14.4.6 Procedure For Processing

The Zoning Administrator shall review all site plans submitted to him. The Zoning Administrator shall verify the completeness and compliance of the site plan and circulate the site plan to the relevant City, County and State agencies and officials for comments as to the proposed development's conformance to all applicable standards and requirements and whether approval of the site plan is recommended. The reviewing agencies and officials may include, but need not be limited to:

- City Director of Public Works and Utilities
- City Engineer
- City Fire Department
- City Police Department
- County Planning Department
- Superintendent of County Schools
- County Health and Environmental Health Departments
- N.C. Department of Transportation
- N.C. Department of Health and Environment
- U.S. Soil Conservation Services, District Office

- a. Except under abnormal circumstances, within twenty-one (21) days of the receipt of the site plan the Zoning Administrator shall approve, approve subject to conditions, or disapprove the site plan and notify the applicant in writing of the action taken. In cases when the site plan approval is subject to conditions or when the site plan is denied approval, the Zoning Administrator shall set forth in writing any conditions or changes which might make the site plan acceptable.
- b. An applicant may appeal any decision of the Zoning Administrator in accordance with Section 15.2 of this Ordinance.

Section 14.5 Right Of Appeal

If a request for a zoning permit is disapproved or if a ruling of the Zoning Administrator is questioned, the aggrieved party may appeal such ruling to the Board of Adjustment in accordance with Section 15.2 of this Ordinance. Said appeal shall be made within ten (10) business days of a written decision made by the Zoning Administrator.

Section 14.6 Remedies

In case any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of this Ordinance, the Zoning Administrator, or any other appropriate City Official, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceeding to prevent such violation.

Section 14.7 Complaints Regarding Violations

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the Zoning Administrator who shall properly record such complaint, immediately investigate, and take action as provided by this Ordinance.

Section 14.8 Enforcement and Penalties

Any person, firm or corporation convicted of violating the provisions of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined an amount not to exceed five-hundred dollars (\$500) and/or imprisoned for a period not to exceed thirty (30) days. Each day of violation shall be deemed a separate offense, provided that the violation of this Ordinance is not corrected within thirty (30) days after notice of said violation is given.

In addition to the other remedies cited in this Ordinance for the enforcement of its provisions, and pursuant to North Carolina General Statutes 160A-175, 160A-365 and 160A-389, the regulations and standards in this Ordinance may be enforced through the issuance of civil penalties by the Zoning Administrator.

Subsequent citations for the same violation may be issued by the Zoning Administrator if the offender does not correct the violation within three (3) days (except as otherwise provided in a Warning Situation) after it has been issued unless the offender has sought an appeal to the actions of the Zoning Administrator through the Board of Adjustment.

The following penalties are hereby established:

Warning Citation	Correct Violation within 10 Days
First Citation	\$50
Second Citation For Same Offense	\$100
Third and Subsequent Citations for Same Offense	\$500 for Each Day

If the offender fails to pay penalties that have been cited within five (5) business days after the offender has been cited, the City may recover the penalties in a civil action in the nature of debt.

Pursuant to G.S. 160A-389, if a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Ordinance or other regulation made under authority conferred thereby, the City in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises.

Pursuant to North Carolina General Statute Section 160A-175, the City may seek a mandatory or prohibitory injunction and an order of abatement commanding the offender to correct the unlawful condition upon or cease the unlawful use of the subject premises. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

The above remedies are cumulative, and the City may pursue any or all of the same at its discretion. Each day that the violation exists shall constitute a separate and distinct offense.

PART 15

BOARD OF ADJUSTMENT

Section 15.1 Powers, Duties and Procedures

(A) The Board of Adjustment shall have all the powers and duties authorized by North Carolina General Statute 160A-388, and in the manner provided for in this Ordinance. Generally, such powers and duties shall include, but not be restricted to the following:

- (1) Hearing and deciding all appeals from decisions made by the Zoning Administrator.
- (2) Hearing and deciding appeals which require interpretation of this Zoning Ordinance.
- (3) Hearing and granting variances from the provisions of this Ordinance.
- (4) Temporary subdivision sales office permit application.
- (5) Conditional use permit application for accessory manufactured homes.
- (6) Permits for temporary housing in the event of a disaster.
- (7) Hearing applications to replace or for a change in use with respect to nonconformities.

(B) Establishment of the Board of Adjustment

(1) The Board of Adjustment shall consist of three (3) regular members appointed by the Cherryville City Council who reside inside the corporate limits of the City of Cherryville and two (2) regular members appointed to said Board by the Gaston County Board of Commissioners as a representative of the extraterritorial jurisdiction, said extraterritorial representative being a resident of such area. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board.

(2) Two (2) alternate Board of Adjustment members shall also be appointed. Said members shall serve in the absence of regular Board of Adjustment members. Said alternate members shall be appointed in the same manner as regular members. Such alternate members, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all of the powers

and duties of such regular member so absent. One (1) alternate member shall reside inside the Cherryville corporate limits and one (1) shall reside in the area of extraterritorial representation. The Gaston County Board of Commissioners shall appoint said member representing the extraterritorial jurisdiction. The Cherryville City Council shall appoint the alternate member representing the City of Cherryville.

Section 15.2 Administrative Review

(A) The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator and apply such interpretation to particular fact situations.

(B) The Board of Adjustment may, after having held a public hearing on the matter, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed or make an interpretation or determination with reference to the appeal.

(C) Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Administrator in accordance with Section 15.6. The notice of appeal shall state the grounds for the appeal.

(D) The Administrator shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(E) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(F) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the Administrator. Posting of signs is not required.

(G) The Administrator shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The Administrator shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(H) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Administrator certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this chapter. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the Administrator a request for an expedited hearing of the appeal and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this chapter shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications affected by the issue being appealed.

(I) The Administrator shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

(J) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record and the scope of review shall be as provided in G.S. 160A-393(k).

(K) The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution.

Section 15.3 Variance

(A) When practical difficulties, special conditions, or unnecessary hardships would result from carrying out the strict letter of this Ordinance, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of this Ordinance relating to the construction or alteration of buildings or structures or the use of land.

(B) The request for a variance for a use expressly, or by inference, prohibited in the district involved, shall not be granted.

(C) The Board of Adjustment may only grant a variance only after having first held a public hearing on the matter. When unnecessary hardships would result from carrying out the strict letter of these zoning regulations, the Board of Adjustment shall vary any of the provisions of the zoning regulations upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the zoning regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - (4) The requested variance is consistent with the spirit, purpose, and intent of the zoning ordinance, such that public safety is secured and substantial justice is achieved.
- (D) The Board of Adjustment, in granting a variance, may prescribe appropriate conditions and safeguards in conformity with this Ordinance provided the conditions are reasonably related to the variance. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Section 14.8 of this Ordinance.
- (E) Unless otherwise authorized by the Board of Adjustment, any order of the Board of Adjustment in granting a variance shall expire, if a building permit or certificate of occupancy (for a use is a building permit is not required) has not been obtained within one (1) year from the date of the Board of Adjustment's decision.

Section 15.4 Nonconformities

- (A) The Board of Adjustment shall hear and decide appeals from any land owner.
- (1) to make a change in use of a nonconforming use
 - (2) to replace a nonconforming use or structure which has been destroyed
 - (3) to make a change in location of a nonconforming use of land
 - (4) for a special exception to allow an expansion of a nonconforming use.
- (B) The Board of Adjustment may only grant a change in nonconforming use, replacement of a nonconforming use that has been destroyed, or change in location of a nonconforming use of land after having first held a public hearing and having determined that:

(1) (a) said change will be more suitable and appropriate for the lot(s) on which it is located than the existing situation, and (b) that the proposed change will have a less harmful effect than the existing situation on the properties surrounding the lot(s) in question, and

(2) that the decision to grant the change will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise be detrimental to the public welfare.

- (C) The Board of Adjustment, in granting said changes, may prescribe appropriate conditions and safeguards in conformity with this Ordinance in order to conform with Section 15.4(A)(1)(a)(b). Violation of such conditions and safeguards when made a part of the terms upon which the change was granted, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Section 14.8 of this Ordinance.

Section 15.5 Application Procedure

The following regulations apply to all applications submitted to the Board of Adjustment:

- 15.5.1** Before a petition for an administrative appeal, conditional use permit or temporary use permit or variance shall be heard and a public hearing conducted by the Board of Adjustment, a completed application shall be submitted to the Zoning Administrator along with a fee in accordance with fee schedule established by the City Council. Said fee shall be waived for any petition initiated by the Zoning Administrator or other official of the City of Cherryville who initiates a request on behalf of the City. A map clearly identifying the subject property and all contiguous pieces of properties shall accompany the application.

In addition, a list of names and addresses of the owners of said properties, obtained from the most recent official tax records, shall be provided by the applicant.

- 15.5.2** The Board of Adjustment shall hold a public hearing on an application no later than sixty (60) days after the completed application has been filed with the Zoning Administrator. The Board of Adjustment shall decide on the matter that was presented at the public hearing within thirty-one (31) days of the close of the public hearing. The decision of the Board of Adjustment shall be in writing and signed by the chair or other duly authorized member of the board. The decision is effective upon filing the written decision with the clerk to the Board. The decision of the board shall be delivered by personal delivery, electronic mail, or sent by first class mail to the applicant, property owner and to any person who has submitted written request for a copy, prior to the date the decision becomes effective by the Zoning Administrator within five (5) working days after a determination on the application has been made by the Board of Adjustment. The

Zoning Administrator shall certify that proper notice has been made.

15.5.3 The City of Cherryville shall give notice of all public hearings. Said notice shall become a part of the record of the proceedings of the Board of Adjustment. Notice shall be given in the following manner:

- (1) The City shall send notices by first class mail to the applicant, to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and to owners of all contiguous pieces of property at least ten (10) days, but not more than 25 days prior to the public hearing. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice.
- (2) Notice shall also be conspicuously posted by the City in the Cherryville City Hall at least ten (10) days prior to the public hearing. Said notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.
- (3) A conspicuous notice shall also be posted by the City in a conspicuous location on the subject property(ies) indicating the nature of the public hearing and date, time and place at which it is to occur. Said sign shall be posted on the property(ies) at least ten (10) days but not more than 25 days, prior to the hearing.

15.5.4 The concurring vote of four-fifths (4/5) of the Board of Adjustment shall be necessary to, grant a variance, issue a temporary use or conditional use permit. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this provision, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members. In all matters coming before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

Section 15.6 Appeals from the Board of Adjustment

15.6.1 An application for a rehearing shall be made in the same manner as provided for in the original hearing. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial

change in facts, evidence, or conditions in the case, shall be presented in writing, and/or graphically. The Board of Adjustment shall deny a rehearing, if, in its judgment, such change in facts, evidence or conditions has not been proven.

In the event that the Board of Adjustment finds that a rehearing is warranted, it shall thereupon proceed in the same manner as in the original hearing.

A public hearing shall not be required to be held by the Board of Adjustment to consider holding such a rehearing. Approval of said consideration shall, however, require an affirmative vote of at least four (4) voting members.

15.6.2 Every quasi-judicial decision of the Board of Adjustment shall be subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to G. S. 160A-393. A petition for review shall be filed with the Clerk of Superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with Section 15.5. When first class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

(all of Section 15 amended March 10, 2014 per NC House Bill 276)

PART 16 (Reserved)

PART 17 (Reserved)

PART 18 (Reserved)

PART 19
AMENDMENTS

Section 19.1 Amendments To Text And Map

Zoning regulations and restrictions, and zone boundaries may from time to time be amended, supplemented, changed, modified or repealed in the following manner:

19.1.1 The Planning Board, City Council or any person may institute applications for a change in the Zoning Ordinance text or map.

19.1.2 The application for a change in a zoning district shall be made on a form provided by the City.

- a. Each noncontiguous parcel of land for which a rezoning is requested shall be considered as a separate application, and a fee (in accordance with a fee schedule established by the City Council) shall accompany each application. There shall be no fee for applications instituted by the Zoning Administrator or any City of Cherryville official acting on behalf of the City.
- b. Each application shall be signed and contain the following information:
 - (1) Applicant's full name, address, and telephone number; the property owner's full name, address and telephone number, if different from applicant.
 - (2) Applicant's interest in the property.
 - (3) If the proposed change would require a change in the zoning map, the current zoning of the property and the type of zoning requested. In addition, an accurate and scaled diagram showing shall accompany the application:
 - a. All property lines with dimensions, distances of lot from the nearest street intersection and north arrow.
 - b. Adjoining street rights-of-way and paving widths.
 - c. Zoning classification of all contiguous lots.
 - (4) The names and addresses of all contiguous property owners as shown on the most current records of the Gaston County Tax Supervisor's Office.

- c. Except for rezoning involving a conditional use district, neither the Planning Board nor the City Council shall evaluate a rezoning petition based on any specific proposal for the use or development of the property. The petitioner shall refrain from using any graphic materials or descriptions before either body except for those that would apply to any use permitted in the requested zoning district.
- d. A metes and bounds survey or description shall accompany the application if the petition for rezoning is for an area less than the entire lot.

19.1.3 The application for a change in the text shall be on a form provided by the City and shall be accompanied by a fee (in accordance with a fee schedule established by the City Council). The application shall contain a reference to the specific section, subsection, paragraph or item proposed to be changed, as well as the wording of the proposed change.

19.1.4 The Planning Board shall consider no application unless it has been properly completed and submitted to the Zoning Administrator at least fifteen (15) days prior to the meeting at which it is to be reviewed. This requirement may be waived by a unanimous vote of the Planning Board membership present at a meeting of the Planning Board occurring less than fifteen (15) days prior to the date of submission. In no case shall the meeting at which the Planning Board initially reviews the application occur greater than thirty (30) days after the completed application was submitted to the Zoning Administrator. The Planning Board shall have thirty (30) days from the date at which it initially met to review the application to submit its recommendation to the City Council. Said recommendation shall address whether the proposed amendment is consistent with any comprehensive plan that has been adopted by the governing board and any other officially adopted plan that is applicable along with other matters that the Planning Board deems appropriate and a statement as to why Planning Board considers its recommendation to be reasonable and in the public interest. If a recommendation is not made during said thirty (30) day period, the application shall be forwarded to the City Council without a recommendation.

19.1.5 If a petition for rezoning is proposed, the Planning Board shall consider the matter. If a recommendation is made to the City Council, it shall be as follows:

- a. Grant the rezoning as requested, or
- b. Grant the rezoning with a reduction of the area requested, or
- c. Grant the rezoning to a more restrictive general zoning district or classification(s) (but less restrictive than the existing zoning classification) as shown in Section 19.1.7 of this Ordinance;
- d. Grant the rezoning with a combination of Sections 19.1.5(a) (b) and (c), or

- e. Denial of the application request.

19.1.6 If a petition to amend the text of this Ordinance is proposed, the Planning Board shall consider the matter. If a recommendation is made to the City Council, it shall be as follows:

- a. Adoption of the amendment(s) as written, or
- b. Adoption of the amendment as revised by the Planning Board, or
- c. Rejection of the amendment.

19.1.7 The list of all general zoning districts in descending degrees of restrictiveness is as follows:

1. R-40 (most restrictive)	6. RO
2. R-15	7. B-1
3. R-12	8. B-2
4. R-9	9. B-3
5. RMF	10. GMC (least restrictive)

19.1.8 The Zoning Administrator shall transmit any decision of the Planning Board to the City Council. Once the Planning Board has taken action or the time for action by the Planning Board has expired, the City Council may call a public hearing on the proposed action. Notification of the public hearing shall be made in the following manner:

- a. A notice shall be published in a newspaper having general circulation in the Cherryville area once a week for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the public hearing. In computing such time, the date of publication is not to be included, but the date of the hearing shall be included.
- b. A notice shall be conspicuously placed by the City in the City Hall not less than ten (10) days nor more than twenty-five (25) days before the date established for the public hearing.
- c. A conspicuous notice shall be posted by the City in at least one (1) conspicuous place on the subject property (or at appropriate locations along the boundary of the rezoning area sufficient to be seen by the public where the rezoning consists of more than one tract of property or a tract with more than one road frontage) at least ten (10) days prior to the public hearing. A notice shall not be posted for any zoning petition that only

involves a proposed change to the Zoning Ordinance text.

- d. At least ten (10) but not more than twenty-five (25) days prior to the public hearing, a notice of the proposed zoning change shall be sent by the City by first class mail to the applicant and to all contiguous property owners.

First class mail notice shall not be required for any zoning petition that only involves a proposed change to the Zoning Ordinance text. First class mail notices shall also not be required if the proposed zoning action involves a zoning map amendment that directly affects more than fifty (50) properties, owned by a total of at least fifty (50) different property owners. In lieu of sending first class mail notice to all the affected and abutting property owners, the Town may elect to publish in a newspaper of local circulation a notice of the public hearing that includes one or maps showing the boundaries of the area affected by the proposed map amendment. Said newspaper notice shall be not less than one-half of a newspaper page in size. Said notice shall map shall satisfy the final two advertisements published to satisfy the requirements of Section 19.1.8(a).

Any such enlarged newspaper notice shall only be effective for affected or abutting property owners who reside in the area of general circulation of the newspaper in which the notice is published. Such property owners who reside outside of the newspaper circulation area shall nonetheless be sent first classes mail notice in the prescribed 10-25 day period prior to the public hearing.

- e. The person(s) mailing any such notices shall certify to the City Council that fact, and the certificate shall be deemed conclusive in the absence of fraud.

19.1.9 A written petition of protest may be filed with reference to any proposed changes in the zoning regulations or in the zone boundaries. In a case of protest against such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in the proposed change, or of those immediately adjacent thereto either in the rear thereof, or on either side thereof, extending one hundred (100) feet therefrom, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of the opposite lots, an amendment shall not become effective except by favorable vote of three-fourths (3/4) of all the members of the City Council. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of this Ordinance as a result of annexation or otherwise.

- a. No protest against any proposed change shall be valid or effective unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the Zoning Administrator in sufficient time to allow the City at least two (2) normal work days, excluding Saturdays, Sundays and legal

holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. All protest petitions shall be on a form prescribed by the City Council and furnished by the Zoning Administrator, and such form may prescribe any reasonable information deemed necessary to permit the Zoning Administrator to determine the sufficiency and accuracy of the petition.

19.1.10 After the public hearing has been conducted and officially closed, the City Council shall render a decision concerning the proposal not later than the next regularly scheduled City Council meeting. The decision of the City Council shall be limited to one of the various alternatives listed in Sections 19.1.5 and 19.1.6 of this Ordinance. Any final decision made by the City Council shall be accompanied by a statement that address (1) whether the proposed amendment is consistent with any comprehensive plan that has been adopted by the governing board and any other officially adopted plan that is applicable, and (2) other matters that the City Council deems appropriate and (3) why it considers the action taken to be reasonable and in the public interest. A copy of the City Council's decision shall be sent to the applicant by the Zoning Administrator by first class mail within five (5) working days after the City Council's decision.

19.1.11 If the City has denied an application for the change of any zoning district or change in zoning text, it shall not, thereafter, accept any application for the same change of zoning districts affecting the same property or any portion thereof or similar change in the zoning text until the expiration of one (1) year from the date of such previous denial.

Section 19.2 Additional Provisions Pertaining To Parallel Conditional Use Zoning Map Amendments

The procedures in this section exist to supplement the procedures set forth in Section 19.1 of this Ordinance, to clarify special requirements for parallel conditional use rezonings and to relate the issuance of the conditional use permit to the zoning map amendment process.

19.2.1 Purpose

The conditional rezoning process allows particular uses to be established, but only in accordance with a specific development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediate surrounding area and/or on the entire community which cannot be predetermined and controlled by general district standards or the criteria governing planned developments. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property and be consistent with the objectives of these regulations, the adopted

Land Use Plan, and other plans for the physical development of the City as adopted by the City Council. The review process established herein provides for the accommodation of such uses by a reclassification of property into a "parallel conditional use" district. The "parallel conditional use" district approval process is also established to address those situations when a particular use may be acceptable but the general zoning districts which would allow that use would not be acceptable.

19.2.2 Reclassification and Conditional Use Permit Required Prior to Development

In order for a property owner to secure privileges for developing property under the parallel conditional use process, the property must first be rezoned by the City Council to a parallel conditional use district, and secondly the owner must secure a conditional use permit in accordance with Part 13 of this Ordinance from the City Council. The Conditional Use Permit which may contain fair and reasonable conditions to assure conformance with this Ordinance and other plans adopted by the City Council and to obtain sufficient compatibility with surrounding properties. Any use permitted under this process must also conform to the development regulations for the corresponding general zoning district. Thus, for example, if a property were rezoned to a CU-B-2 District and conditional use permit authorized the development of a particular use, that use must **(i)** be a use allowed in the B-2 District and **(ii)** meet all dimensional, screening and related requirements of the B-2 District. Rezoning of property to a parallel conditional use district is a voluntary procedure on the part of the property owner and is intended for firm development proposals. It is not intended or suited for securing early zoning for tentative proposals, which may not be undertaken for some time. No parallel conditional use district shall be established until the owner(s) of the property(ies) in question (or his authorized agent) proposing the district has submitted an application for the rezoning of the property and issuance of a conditional use permit and the City Council has approved such application in accordance with the procedures stated herein.

19.2.3 Plans and Other Information to Accompany Petition

Every application for the rezoning of property to a parallel conditional use district and issuance of a conditional use permit shall be accompanied by a site plan, drawn to scale, and any necessary supporting information together which conform to all the requirements set forth in Section 13.3-a of this Ordinance and when requested, such additional information that may be required pursuant to Section 13.3-e of this Ordinance.

19.2.4 Submittal to the Zoning Administrator

Submittal to the Zoning Administrator of an application for a parallel conditional use

rezoning shall be in accordance with the schedule set forth in Section 19.1.4 of this Ordinance. Normally, an application for a conditional use permit is submitted at the same time and is reviewed by the Zoning Administrator, Planning Board, and City Council, and is approved by the City Council contemporaneously with review and approval of the rezoning application. However, when the application is for a conditional permit in conformance with the parallel conditional use rezoning application (approved or under review), it may be submitted at a later date or may be approved by the City Council at a date following approval of the parallel conditional use rezoning.

19.2.5 City Council Decision

A rezoning, under the parallel conditional use rezoning process, does not confer upon the applicant any privileges for development under that zoning district unless and until a conditional use permit is approved for the property in question by the City Council.

Prior to issuance of a conditional use permit the application shall be subject to all of the procedures, hearing, and findings as set forth in Section 13.4 (and 13.5 if applicable) of this Ordinance.

19.2.6 Effect of Approval

- a. If a petition for a parallel conditional district rezoning and conditional use permit are both approved under this Part, the district that is established, the approved conditional use permit, and all conditions which may have been attached to the approval are binding on the property as an amendment to these regulations and to the Zoning Map. All subsequent development and use of the property shall be in accordance with the standards for the approved conditional use district, the conditional use permit, and all conditions attached to the approval.
- b. If a petition is approved subject to conditions, the Zoning Administrator shall record with the register of deeds a notice that development of the subject property is subject to conditions and that such conditions are on file at the Zoning Administrator's Office.
- c. Following the approval of the petition for a parallel conditional use district, the subject property shall be identified on the Zoning Map by the appropriate district designation. A parallel conditional use district shall be identified by the same designation as the underlying general zoning district preceded by the letters CU (For Example, "CU-B-1").
- d. Any conditional use permit issued in relation to a parallel conditional use rezoning shall be subject to the same requirements as any other conditional use permit as set forth in Part 13 of this Ordinance.

19.2.7 Alterations to Approval

- a. Except as provided in Paragraph (b) of 19.2.7, changes to the approved petition or to the conditions attached to the approval shall be treated the same as amendments to these regulations or to the Zoning Map and shall be processed in accordance with the procedures in this Part.
- b. Minor changes in the detail of the approved application which are in accordance with Section 13.6 of this Ordinance may be made with the approval of the Zoning Administrator.

19.2.8 Change in Parallel Conditional Use Zoning

Once a petition for rezoning to a parallel conditional use district and issuance of a conditional use permit has been approved by the City Council, any request to materially change (any change not authorized by 19.2.7(b) of this Ordinance) the parallel conditional use district or conditional use permit for a property may only be made by the property owner or his authorized agent only after a public hearing has been duly advertised and held in accordance with Section 19.1.8 of this Ordinance.

Any amendment to the conditional use permit shall also be subject to the same considerations as set forth in Section 13.4 (and 13.5 if applicable) of this Ordinance.

19.2.9 Revocation of Approval of a Parallel Conditional Use District

It is intended that property shall be reclassified to a parallel conditional use district and conditional use permit issued only in light of firm plans to develop the property. Therefore, after the date of approval of the conditional use permit, the Zoning Administrator shall periodically examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Zoning Administrator determines that a building permit has not been secured within one (1) year (unless a greater time period was listed as one of the conditions contained in the City Council's approval) following the date of the approval of the conditional use permit, the Zoning Administrator shall notify the applicant of such a finding, and within sixty (60) days of said notification, the Planning Board shall make a recommendation to the City Council concerning the rescission of the conditional use permit and rezoning of the property to a general zoning district classification. The Planning Board shall recommend to extend the life of the conditional use permit or have it rescinded.

If the conditional use permit is rescinded, the City Council may then vote to rezone the property to a general zoning district. Notice of said public hearing shall be per Section 19.1.8 of this Ordinance.

PART 20

LEGAL STATUS PROVISIONS

Section 20.1 Conflict With Other Laws

Whenever the regulations of this Ordinance require a greater width or size of yards, or other open space, or require a lower height of buildings or fewer number of stories or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under any other statute or agreement, the regulations and requirements of this Ordinance shall govern.

Whenever the provisions of any other statute or agreement require more restrictive standards than are required by this Ordinance, the provisions of such statute or agreement shall govern.

This Ordinance is in part carried forward by re-enactment of some of the provisions of the Zoning Ordinance of the City of Cherryville (adopted by the City Council on January 10, 1977, as amended) and it is not the intention to repeal but rather to re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced. All provisions of the Zoning Ordinance of the City of Cherryville enacted in January 10, 1977, as amended, which are not re-enacted herein are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of any Zoning Ordinance heretofore in effect, which are now pending in any of the courts of this State or of the United States, shall not be abated or abandoned by reason of the adoption of this Ordinance but shall be prosecuted to their finality, the same as if this Ordinance had not been adopted, and any and all violations of the existing Zoning Ordinance, prosecutions for which have not yet been initiated, may be hereafter filed and prosecuted. Nothing in this Ordinance shall be construed as to abandon, abate or dismiss any litigation or prosecution now pending, and/or which may heretofore have been instituted or prosecuted.

Section 20.2 Separability

Should any section or provisions of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 20.3 Effective Date

This Ordinance shall take effect and be enforced as of the 10th day of July, 1995.

THIS ORDINANCE IS HEREBY ADOPTED BY THE CITY COUNCIL OF THE
CITY OF CHERRYVILLE ON THIS THE 10TH DAY OF JULY, 1995.

MAYOR, CITY OF CHERRYVILLE

ATTEST:

CITY CLERK