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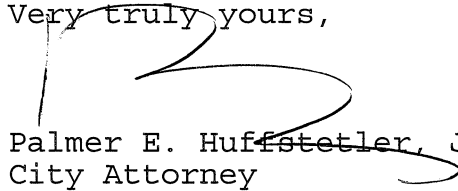
September 27, 2018

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.

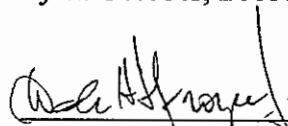
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHERRYVILLE, NORTH CAROLINA:

- 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on or before April 6, 1998, and not included in the Code or recognized and continued in force by reference therein, are repealed.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repeal provided for in Section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.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 6<sup>th</sup> 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*

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Wes Golden  
Jerry Hudson  
Frank Osborne  
Nell Parker  
*City Council*

---

David Hodgkins  
*City Manager*

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Palmer E. Huffstetler, Jr.  
*City Attorney*

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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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CODE	CDI:1
CODE APPENDIX	CDA:1
CODE COMPARATIVE TABLES	CCT:1
STATE LAW REFERENCE TABLE	SLT:1
CHARTER INDEX	CHTi:1
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### *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, City Clerk

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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.

**Article III. Mayor and City Council**

- 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.
- Sec. 3.6. Quorum; voting.
- Sec. 3.7. Ordinances and resolutions generally.

**Article IV. Election Procedure**

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- Sec. 4.2. Voting; votes necessary for election.
- Sec. 4.3. Filing of candidates.
- Sec. 4.4. Names on ballots.
- Sec. 4.5. Regulation of elections.
- Sec. 4.6. Absentee voting.

**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.
- Sec. 7.5. Consolidation of positions and functions.

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- Sec. 8.1. Custody, accrual of interest and disbursement of city money.
- Sec. 8.2. Independent audit of city books and accounts.

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- Sec. 9.1. Surplus real property.
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- Sec. 10.1. Jurisdiction.
- Sec. 10.2. Service of process.
- Sec. 10.3. Residence.
- Sec. 10.4. Effect of ordinance on city property.

## **Article XI. Regulatory Powers**

- 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
<b>State Law References:</b> 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.  
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.  
Sec. 2-37. Composition of governing body.  
Sec. 2-38. Oaths of mayor and councilmembers.  
Sec. 2-39. Duties of mayor.  
Sec. 2-40. Duties of councilmembers.  
Secs. 2-41—2-60. Reserved.

##### Division 2. Meetings

- Sec. 2-61. Time and place of regular meetings.  
Sec. 2-62. Adjournment upon failure to have quorum or complete business.  
Sec. 2-63. Rules of procedure.  
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.  
Secs. 2-87—2-110. Reserved.

#### 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.  
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.

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\*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.  
 Secs. 2-143--2-165. Reserved.

### Division 3. Gaston County Historic Properties Commission

Sec. 2-166. Purpose.  
 Sec. 2-167. Composition; term of office.  
 Sec. 2-168. Powers and authority.

## **Division 4. Downtown Architectural Review Board**

Sec. 2-169	Definitions
Sec. 2-170	Purpose
Sec. 2-171	Establishment
Sec. 2-172	Composition; procedures; authority
Sec. 2-173	Establishment of redevelopment district boundaries
Sec. 2-174	Reserved
Sec. 2-175	Certificate of appropriateness application
Sec. 2-176	Action on application
Sec. 2-177	Prerequisite to other permits; standards for consideration
Sec. 2-178	Architectural guidelines
Sec. 2-179	Appeal
Sec. 2-180	Reserved
Sec. 2-181	Violations

## 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.

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\* **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.

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**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.

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**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.

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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**

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**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.**

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**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.
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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\***

#### **Article I. In General**

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

#### **Article II. Nuisances**

##### **Division 1. Generally**

Sec. 14-36. Violations.  
Sec. 14-37. Remedies.  
Sec. 14-38. Illustrative enumeration.  
Sec. 14-39. Investigation of conditions.  
Sec. 14-40. Order of abatement--Notice.  
Sec. 14-41. Same--Appeal.  
Sec. 14-42. Abatement by city--Conditions.  
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Sec. 14-44. Unpaid charges to become lien.  
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##### **Division 2. Abandoned, Nuisance and Junked Motor Vehicles**

Sec. 14-66. Administration.  
Sec. 14-67. Definitions.  
Sec. 14-68. Prohibited; removal authorized.  
Sec. 14-69. Nuisance vehicle unlawful; removal authorized.  
Sec. 14-70. Junked vehicle regulated; removal authorized.  
Sec. 14-71. Removal of vehicles; pretowing notice requirements.  
Sec. 14-72. Exceptions to prior notice requirement.  
Sec. 14-73. Removal of vehicles; post-towing notice requirements.  
Sec. 14-74. Right to hearing before sale or final disposition.  
Sec. 14-75. Redemption of vehicle during proceedings.  
Sec. 14-76. Sale and disposition of unclaimed vehicle.  
Sec. 14-77. Conditions on removal of vehicles from private property.  
Sec. 14-78. Protection against criminal or civil liability.  
Sec. 14-79. Exceptions.  
Sec. 14-80. Unlawful removal of impounded vehicle.  
Sec. 14-81--14-89. Reserved.  
Sec. 14-90. Noise -- loud, disturbing and unnecessary noise.  
Sec. 14-91. Same -- acts construed as noise.  
Sec. 14-92. Offenses Miscellaneous.  
Sec. 14-93. Violations.

#### **Article III. Transportation of Radioactive Substances**

Sec. 14-101. Purpose.  
Sec. 14-102. Definitions.  
Sec. 14-103. Penalties.  
Sec. 14-104. Permit required.  
Sec. 14-105. Issuance of permit.  
Sec. 14-106. Notice.  
Sec. 14-107. Bond.

**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.

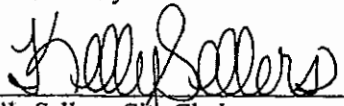
**SECTION C. EFFECTIVE DATE.**

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.

  
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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.

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**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
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#### **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 11<sup>th</sup> 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.

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\* **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

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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, befouls 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.

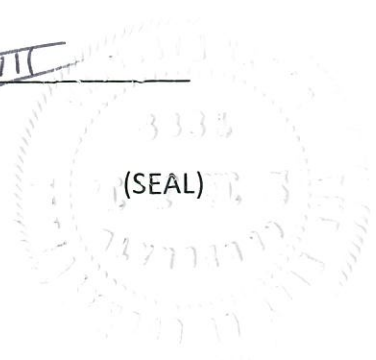
Section 10. Effective Date.

This ordinance shall become effective on January 1, 2018.

Adopted this the 9 day of October 2017.

  
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Paige Green, CMC, NCCMC, City Clerk

  
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H. L. Beam, III, Mayor





**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.

(Ord. of 2-10-92, § 17-12)

**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

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 8<sup>th</sup> 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.

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\* **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 13<sup>th</sup> 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)

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**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 (15<sup>th</sup>) 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 10<sup>th</sup> 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 14<sup>th</sup> 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**

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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 11<sup>th</sup> 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 8<sup>th</sup> 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 10<sup>th</sup> 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 9<sup>th</sup> 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 18<sup>th</sup> 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 pollutorial 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 pollutorial 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 (NH<sub>3</sub>-N)* means a chemical

combination of hydrogen and nitrogen occurring extensively in nature. The combination used in water and wastewater is expressed as NH<sub>3</sub>-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.), 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.  
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##### **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.

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**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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## CODE COMPARATIVE TABLE

### 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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## STATE LAW REFERENCE TABLE

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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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