

Ordinance No. 93

**AN ORDINANCE AMENDING CHAPTER 9 OF THE CHARLOTTE CITY CODE ENTITLED  
"FLOODPLAIN REGULATIONS", CHAPTER 11 ENTITLED "HOUSING", CHAPTER 17 ENTITLED  
"SOIL EROSION AND SEDIMENTATION CONTROL", CHAPTER 18 ENTITLED "STORMWATER",  
AND CHAPTER 19 ENTITLED "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES"**

BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF CHARLOTTE, NORTH CAROLINA, that:

Section 1: Chapter 9, Floodplain Regulations, of the Charlotte City Code is hereby amended to read as shown in the attached Exhibit A, which is incorporated and made a part of this ordinance,

Section 2: Chapter 11, Housing, of the Charlotte City Code is hereby amended to read as shown in the attached Exhibit B, which is incorporated and made a part of this ordinance,

Section 3: Chapter 17, Soil Erosion and Sedimentation Control, of the Charlotte City Code is hereby amended to read as shown in the attached Exhibit C, which is incorporated and made a part of this ordinance,

Section 4: Chapter 18, Stormwater, of the Charlotte City Code is hereby amended to read as shown in the attached Exhibit D, which is incorporated and made a part of this ordinance,

Section 5: Chapter 19, Streets, Sidewalks and other Public Places, of the Charlotte City Code is hereby amended to read as shown in the attached Exhibit E, which is incorporated and made a part of this ordinance,

Section 6: This ordinance shall become effective as of July 1<sup>st</sup>, 2021.

Approved as to form:

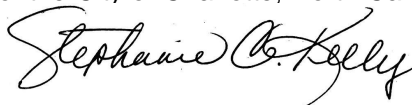


City Attorney

**CERTIFICATION**

I, Stephanie C. Kelly, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 28<sup>th</sup> day of June 2021, the reference having been made in Minute Book 153, and recorded in full in Ordinance Book 64, Page(s) 111-260.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this 28<sup>th</sup> day of June 2021.



Stephanie C. Kelly, City Clerk, MMC, NCCMC

Chapter 9 - FLOODPLAIN REGULATIONS<sup>[1]</sup>

## Footnotes:

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**Editor's note**— Ord. No. 4912, adopted June 25, 2012, amended chapter 9 in its entirety to read as herein set out. Formerly, chapter 9 pertained to similar subject matter and derived from Ord. No. 3578, adopted April 23, 2007, and Ord. No. 4115, §§ 1—13, adopted February 9, 2009.

**Cross reference**— Buildings and building regulations, ch. 5; health and sanitation, ch. 10; soil erosion and sedimentation control, ch. 17; stormwater, ch. 18; streets, sidewalks and other public places, ch. 19; subdivisions, ch. 20; waters, sewers and industrial waste discharge restrictions, ch. 23; zoning, app. A.

**State Law reference**— Assessments for flood protection, G.S. 160A-238; municipal floodway regulations, G.S. 160A-458.1, G.S. 143-215.51 et seq.

## ARTICLE I. - STATUTORY AUTHORIZATION, FINDINGS, PURPOSE AND OBJECTIVES

## Sec. 9-1. - Short title.

The regulations set out in this ordinance (sometimes herein referred to as "this regulation" or "this chapter") shall be known and may be cited as the "Floodplain Regulations of Charlotte, North Carolina."

(Ord. No. 4912, 6-25-2012)

## Sec. 9-2. - Statutory authorization.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; ~~Parts 3, 5, and 8 of~~ Articles 7, 49, and 11 of Chapter 160 ~~DA~~; Article 6 of Chapter 153A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

(Ord. No. 4912, 6-25-2012)

## Sec. 9-3. - Findings of fact.

- (a) The flood hazard areas of Charlotte and Charlotte's land use jurisdiction are subject to periodic inundation which results in loss of life, increased health and safety hazards, destruction of property, and disruption of commerce and governmental services. Inundation from flood waters results in public expenditures for flood protection, flood disaster relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses are created by the cumulative effect of obstructions in floodplains, causing increases in flood heights and velocities and by the occupancy in flood hazard areas by uses vulnerable to floods or hazards to other lands which are inadequately elevated, floodproofed or otherwise unprotected from flood damages.

(Ord. No. 4912, 6-25-2012)

## Sec. 9-4. - Statement of purpose.

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

- (a) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;
- (b) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (c) Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of flood waters;
- (d) Control filling, grading, dredging and other development which may increase erosion or flood damage; and
- (e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. No. 4912, 6-25-2012)

Sec. 9-5. - Objectives.

- (a) The regulations of the special flood hazard areas herein set forth are intended to protect areas of designated floodplains subject to and necessary for regulating flood waters and to permit and encourage the retention of open-land uses which will be so located and designed as to constitute a harmonious and appropriate part of the physical development of the city as provided in the comprehensive plans as such are adopted and amended from time to time.
- (b) The specific intent in establishing special flood hazard areas composed of floodways and flood fringe areas includes the following:
  - 1. To control uses such as fill dumping, storage of materials, structures, buildings and any other works which, acting alone or in combination with other existing or future uses, would cause damaging flood heights and velocities by obstructing flows and reducing floodplain storage;
  - 2. To protect human life and health;
  - 3. To minimize the expenditure of public money for costly flood-control projects;
  - 4. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - 5. To permit certain uses which can be appropriately located in flood hazard areas and to assure such permitted uses will not impede the flow of flood waters or otherwise cause danger to life and property at or above or below their locations along the floodways;
  - 6. To minimize prolonged business interruptions;
  - 7. To protect existing drainage courses that carry abnormal flows of storm water in periods of heavy precipitations;
  - 8. To minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines and streets and bridges located in floodplains;
  - 9. To meet the needs of the streams to carry flood waters and protect the creek channels and floodplains from encroachment so that flood heights and flood damage will not be increased;
  - 10. To inform existing and potential property owners that property is in a special flood hazard area as well as the associated flood risks and development restrictions;
  - 11. To minimize future flood losses by depicting community flood fringe areas on the flood insurance rate maps; and
  - 12. To help maintain a stable tax base by providing for the sound use and development of flood prone areas.

- (c) This chapter is intended to permit only that development within the floodplain which is appropriate in light of the probability of flood damage and presents a reasonable social and economic use of land in relation to the hazards involved. The regulations hereinafter set forth shall apply to all property located within the special flood hazard area as shown on the flood insurance rate maps (FIRM) including FEMA and/or locally approved revisions to data shown on the FIRMs. It is the intent that these regulations combine with and coordinate with the zoning ordinance regulations for the zoning district in which such property is located. Any use not permitted by the zoning regulations shall not be permitted in the special flood hazard area, and any use permitted by the zoning regulations shall be permitted in these districts only upon meeting conditions and requirements as prescribed in this chapter.

(Ord. No. 4912, 6-25-2012)

Secs. 9-6—9-20. - Reserved.

## ARTICLE II. - DEFINITIONS

Sec. 9-21. - Definitions.

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

*Accessory structure* means a structure which is 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.

*Alteration of a watercourse* means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification associated with development which may increase the FEMA or Community Base Flood Elevations.

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

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

*Building* means any structure built for support, shelter or enclosure for any occupancy or storage.

*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.

*Community base flood* means the flood, determined using future land use conditions, having a one-percent chance of being equaled or exceeded in any given year.

*Community base flood elevation* means the water surface elevation shown on the flood insurance rate map and in the flood insurance study, having a one-percent chance of being equaled or exceeded in any given year, determined using future land use conditions.

*Community conditional letter of map revisions (CoCLOMR)* means a letter from the floodplain administrator that provides conditional approval of a study that proposes to change the location of the community encroachment lines, and/or the location of the community flood fringe line, and/or community base flood elevations.

*Community encroachment area* means the channel of a stream or other watercourse and the adjacent land areas that must be reserved in order to discharge the FEMA base flood without cumulatively increasing the water surface elevation more than 0.1 foot (see attachments).

*Community encroachment lines* are lateral limits of the community encroachment area, within which, in the direction of the stream or other body of water, no structure or fill may be added, unless specifically permitted by this chapter (see attachments).

*Community flood fringe area* is the land area located between the community encroachment line and the community flood fringe line as defined herein (see attachments).

*Community flood fringe line* is the line that depicts the outer limits of the community flood fringe area (outer limits of the community special flood hazard area).

*Community letter of map revision (CoLOMR)* means a letter from the floodplain administrator that provides final approval of a study, based on as-built conditions, that changes the location of the community encroachment lines and/or the community flood fringe lines.

*Community special flood hazard area* is the land subject to a one-percent or greater chance of flooding in any given year from a community base flood. It includes the FEMA floodway, community encroachment area, FEMA flood fringe area, and the community flood fringe area (see attachments).

*Conditional letter of map revision (CLOMR)* means a formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective flood insurance rate map or flood insurance study; upon submission and approval of certified as-built documentation, a letter of map revision may be issued by FEMA to revise the effective FIRM.

*Critical facility* means a building used to house a function that is vulnerable or essential to the community. Uses include but are not limited to: child and adult daycare facilities, nursing homes, schools, hospitals, fire, police and medic facilities and other uses as deemed by the floodplain administrator.

*Development* means any manmade change to improved and unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations or storage of equipment or materials.

*Disposal* means, as defined in G.S. 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.

*Dry public street* means a public street at the intersection of an existing or proposed driveway where the surface of the pavement is at an elevation above the community base flood elevation.

*Dryland access* means a gravel, paved or concrete access route, at least 12 feet wide, which is above the community base flood elevation and connects an habitable building to a dry public street.

*Effective date* means the date flood insurance rate maps and flood insurance studies for a community are officially approved by FEMA and are to be used for local regulation and for compliance with NFIP sanctions.

*Elevated building* means a non-basement building built to have the lowest floor elevated above the ground level by, solid foundation perimeter walls, pilings, columns (posts and piers), or shear walls.

*Encroachment* means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain. Building renovations contained within the existing building footprint area are not considered an encroachment.

*Existing manufactured home park or manufactured home subdivision* means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed (including, at

a minimum, the installation of utilities, either final site grading or the pouring of concrete pads and the construction of streets) was completed before August 15, 1978.

*Existing building and existing structure* means any building and/or structure for which the "start of construction" commenced before the effective date of the initial flood insurance rate map.

*FEMA* is the Federal Emergency Management Agency.

*FEMA base flood* means the flood, determined using land use conditions at the time of the study, having a one-percent chance of being equaled or exceeded in any given year.

*FEMA base flood elevation (BFE)* means the water surface elevation shown on the flood insurance rate map and in the flood insurance study. Having a one-percent chance of being equaled or exceeded in any given year, determined using land use conditions present at the time of the study.

*FEMA flood fringe area* is the land area located between the FEMA floodway lines and the line depicting the maximum elevation subject to inundation by the FEMA base flood as defined herein (see attachments).

*FEMA flood fringe line* is the line on a map that depicts the outer limits of the FEMA flood fringe area (see attachments).

*FEMA floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the FEMA base flood, without cumulatively increasing the water surface elevation more than 0.5 foot. On the Catawba River, the FEMA floodway means the channel of a stream or other watercourse and the adjacent land areas that must be reserved in order to discharge the FEMA base flood, without cumulatively increasing the water surface elevation more than 1.0 feet (see attachments).

*FEMA floodway lines* are the lateral limits of the FEMA floodway (see attachments).

*FEMA special flood hazard area* is the land subject to a one-percent or greater chance of flooding in any given year from a FEMA base flood. It includes the FEMA floodway, community encroachment area, and the FEMA flood fringe area (see attachments).

*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 run-off of surface waters from any source.

*Flood insurance* means the insurance coverage provided under the National Flood Insurance Program (NFIP).

*Flood insurance rate map (FIRM)* means an official map of a community, in both digital and printed format, on which the Federal Emergency Management Agency has delineated the special flood hazard area and the risk premium zones applicable to the community. The date of Charlotte's original FIRM is August 15, 1978 and this date should be used to determine whether a structure is pre-FIRM or post-FIRM.

*Flood insurance study* is an examination, evaluation, and determination of special flood hazard areas, corresponding water surface elevations, flood insurance risk zones, and other flood data in a community. The study includes a flood insurance study report, and/or flood insurance rate map (FIRM).

*Floodplain* means the land subject to inundation by the community base flood and is encompassed by the community special flood hazard area.

*Floodplain administrator (or administrator)* means the person, agent, or his or her designees, appointed to administer, implement and enforce the provisions of this chapter.

*Floodplain development permit* means either an individual floodplain development permit or a general floodplain development permit issued for development in the floodplain per the requirements of section 9-62.

*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.

*Floodplain Regulations Technical Guidance Document* is a document developed by Charlotte-Mecklenburg storm water services staff to more clearly explain the application of the provisions of this chapter, specifically the floodplain development permit provisions, through the use of charts and related written materials. The technical guidance document shall not be a part of this chapter, and shall be solely for illustrative and educational purposes. If there is any discrepancy between the technical guidance document and this chapter, the provisions of this chapter shall control.

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

*Flood protection elevation* means the elevation to which all structures located within the community special flood hazard area FEMA special flood hazard area must be elevated (or floodproofed if non-residential). This elevation is the community base flood elevation plus one foot of freeboard except along the Catawba River, including Lake Wylie and Mountain Island Lake where it is the FEMA base flood elevation plus two feet of freeboard.

*Flood-resistant material* means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbars are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

*Floodwall* means a wall built along a shore or bank to protect an area from flooding.

*Floodway* means either the FEMA floodway or the community encroachment area, including the area above a bridge or culvert when applicable.

*Floodway engineering analysis* means an engineering analysis of the impact that a proposed encroachment into a floodway is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

*Flood zone* means a geographical area shown on a flood insurance rate map that reflects the severity or type of flooding in the area.

*Floor.* See *Lowest floor*.

*Freeboard* means the height added to the community base flood elevation (BFE) (or FEMA BFE on the Catawba River) 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, blockage of bridge openings, and the hydrological effect of urbanization of the watershed.

*Functionally dependent facility* means a facility that cannot be used for its intended purpose, unless it is located or carried out in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair or seafood processing facilities. The term does not include long-term storage, manufacture, sales or service facilities.

*General floodplain development permit* is a permit issued for certain types of development in the floodplain per section 9-62.

*Habitable building* means a structure designed primarily for, or used for human habitation. This includes, but is not limited to, houses, condominiums, townhomes, restaurants, retail establishments,

manufacturing buildings, commercial buildings, office buildings, manufactured homes, and similar uses. It does not include accessory structures (see definition above).

*Hazardous waste management facility* means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in G.S. ch. 130A, art. 9.

*Highest adjacent grade* means the highest natural elevation of the ground surface, prior to construction, 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.

*Individual floodplain development permit* means a permit for development in the floodplain that involves activities not listed in subsection 9-62(b)1. and may not qualify for a general floodplain development permit.

*Letter of map revision (LOMR)* means an official revision to the currently effective FEMA FIRM based on as-built conditions and/or more accurate data. It is issued by FEMA and may change FEMA base flood elevations, the location of the FEMA floodway lines and/or the location of the FEMA flood fringe line.

*Letter of map amendment (LOMA)* means a letter from FEMA that officially removes a property or building from the FEMA special flood hazard area (SFHA) that was inadvertently shown in the SFHA on the FIRM.

*Letter of map revision based on fill (LOMR-F)* means a determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

*Levee* means a manmade structure, usually an earthen embankment, floodwall or a combination of both that is designed and constructed to contain, control or divert the flow of water so as to provide protection from temporary flooding.

*Levee system* means a flood protection system which consists of levee(s) and/or floodwall(s) and associated structures, such as closure and drainage devices.

*Light duty truck* means any motor vehicle rated at 8,500 pounds gross vehicular weight rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.



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

*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 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 value of a building, excluding land value, that is determined by an appraiser certified in North Carolina using the cost approach method. Use of the "income capitalization approach" is not acceptable. Market value must be determined based on the building condition prior to start of construction (for proposed improvements) or before damage occurred (for damage repair). The value of the land and site improvements (landscaping, driveways, detached accessory structures, etc.) is not included. The values of the use and occupancy (business income) are not included. The floodplain administrator may use the tax value of the building in lieu of other methods described herein.

Market value also means the actual cash value (ACV) of a building minus depreciation. Actual cash value is the cost to replace a building on the same parcel with a new building of like-kind quality, minus depreciation due to age, use, and neglect. ACV does not consider loss in value mainly due to outmoded design or location factors. Depreciation accounts for the physical condition of a structure. Depreciation does not take into account functional obsolescence or factors that are external to the structure.

*National Flood Insurance Program (NFIP)* means a federal program that provides insurance coverage for flood damage to qualified buildings in communities that agree to adopt and enforce ordinances that meet or exceed FEMA requirements to reduce the risk of flooding.

*New construction* means construction of a replacement structure commenced after total demolition, or renovation/rehabilitation of an existing structure that results in the partial or complete removal of two external walls and has a total cost equal to or exceeding 50 percent of the market value of the structure before the "start of construction" of the improvement. For flood insurance purposes, new construction also means structures for which the start of construction commenced on or after August 15, 1978, and includes subsequent improvements to such structures (see definition of *Flood insurance rate map*).

*New manufactured home park or 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 slabs) is completed on or after November 27, 1972.

*NFIP*. See *National Flood Insurance Program*.

*Nonconforming building or use* means any legally existing building or use which fails to comply with the provisions of this chapter.

*Non-solid fence* means a fence with at least 75 percent open area and with vertical supports each no more than 25 square inches in cross sectional area).

*No-rise certification* means a certification statement signed by a duly-qualified engineer licensed to practice in the state of North Carolina certifying that a proposed project will not impact the FEMA base flood elevations or the community base flood elevations at modeled cross sections in the vicinity of the proposed project.

*North American Vertical Datum* as corrected in 1988 (NAVD or NAVD 1988) is a vertical control used as a reference for establishing varying elevations within the floodplain. If a datum other than NAVD 1988

is used then use the datum listed as the reference datum on the applicable FIRM panel for use on elevation certificate completion. See Flood Insurance Administration (FIA)-20 parts 1, 8.

*Open house forum* is a public meeting held by the owner of the proposed levee and the director of Mecklenburg County storm water services, or his designee. The purpose of the open house forum is to provide an opportunity for discussion between the owner that has submitted an application for the construction of a levee, nearby property owners, and other interested parties.

*Plot plan* means a scaled drawing of a parcel of land showing the location of significant natural features and existing and proposed manmade features.

*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.

*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.

*Preliminary flood insurance rate map (PFIRM)* means a map(s) released by the Federal Emergency Management Agency (FEMA) for public comment prior to the effective date of the FIRM as established by FEMA. The map may be in both digital and printed format and shows the community and FEMA special flood hazard areas, community encroachment areas and FEMA floodways, FEMA and community base flood elevations, flood insurance risk premium zones and other data. The data and maps are subject to change prior to the effective date.

*Preliminary flood insurance study (PFIS)* means a narrative report released by the Federal Emergency Management Agency for public comment prior to the effective date. Information contained in the PFIS includes a description of past flooding and studies, the study area, engineering methods, community and FEMA base flood elevations, other community and FEMA flood data. The flood insurance rate maps are also included as part of the flood insurance study. The data and maps are subject to change prior to the effective date.

*Principally above ground* means that at least 51 percent of the actual cash value of the structure is above ground.

*Project* means a development activity that is physically separate, functionally independent and not constructed at the same time as another development activity.

*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* means a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a car or light duty truck;
- (4) Designed primarily not for use as a permanent dwelling, but as temporarily living quarters for recreational, camping, travel or seasonable use; and
- (5) Is fully licensed and ready for highway use.

*Reference level* is the top of the lowest floor, for regulatory purposes, of structures in the FEMA and/or community special flood hazard area.

*Remedy a violation* means to bring the structure or other development into compliance with this chapter or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impact may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this chapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

*Repetitive Loss* means flood-related damages sustained by a structure during any ten-year period for which the total cost of repairs equals or exceeds 50 percent of the market value of the structure before the damage occurred. Repetitive loss damages include flood-related damages sustained prior to November 16, 2018 for which the cost of repairs equaled or exceeded 25 percent of the market value of the structure before the damage occurred if within the relevant ten-year period.

*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 any facility involved in the disposal of solid waste, as defined in G.S. 130A-290(a)(35).

*Solid waste disposal site* means, as defined in G.S. 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* means the FEMA special flood hazard area.

*Start of construction* means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as pouring a slab or footing, installation of piles, construction of columns, or any work beyond the state of excavation or the placement of a manufactured home on a foundation. Permanent construction does not 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 parts of the main structure. For 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, for floodplain management purposes, a walled and roofed building, a manufactured home, a gas or liquid storage tank, that are principally above ground.

*Substantial Damage* means damage of any origin sustained by a structure over a ten-year period whereby the cost of restoring the structure to the condition before damage occurred would equal or exceed 50 percent of the market value of the structure before the damages occurred. Substantial damage includes flood-related damages sustained by a structure prior to November 16, 2018 for which the cost of repairs at the time of the flood event equaled or exceeded 25 percent of the Market Value of the structure before the damage occurred if within the relevant ten-year period. See definition of "substantial improvement."

*Substantial improvement* means any repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, or combination thereof, where the total cost over a ten-year period 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. Substantial improvement includes any repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, or combination thereof prior to November 16, 2018 for which the cost of repairs at the time of the flood event equaled or exceeded 25 percent of the market value of the structure before the damage occurred or the substantial improvement began if within the relevant ten-year period. 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.
- (c) Any replacement subject to the requirements of section 9-101(e)3 of this chapter.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

*Substantially improved existing manufactured home park or subdivision* means where the repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads over a ten-year period equals or exceeds 50 percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement commenced.

*Technically measurable* means an activity and/or condition that can be modeled within the stated or commonly known accuracy of a floodway engineering analysis or other engineering computations, and may have an impact on base flood elevations. The floodplain administrator may require a no-rise certification by a licensed engineer to determine if a proposed activity and/or condition meets the technically measurable definition.

*Temperature controlled* means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

*Variance* is a grant of relief to a person from the requirements of this chapter.

*Violation* means the failure of a structure or other development to be fully compliant with this chapter. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in articles IV and V is presumed to be in violation, until such time as the documentation is provided.

*Watercourse* means a lake, river, creek, stream, 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.

*Water surface elevation (WSE)* means the height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

(Ord. No. 4912, 6-25-2012; Ord. No. [9399](#), 9-10-2018)

Secs. 9-22—9-35. - Reserved.

### ARTICLE III. - GENERAL PROVISIONS

Sec. 9-36. - Lands to which this chapter applies.

This chapter shall apply to all lands in the land use jurisdiction, including the extra-territorial jurisdiction (ETJ) of the City of Charlotte within the area shown on the flood insurance rate maps (FIRM) or any FEMA and/or locally approved revisions to data shown on the FIRMs, as being located within the community special flood hazard areas or land adjacent to the community special flood hazard areas if it is affected by the work that is taking place.

(Ord. No. 4912, 6-25-2012; Ord. No. [9399](#), 9-10-2018)

Sec. 9-37. - Basis for establishing the special flood hazard areas.

The FEMA and community special flood hazard areas are those identified in the effective flood insurance study (FIS) for Mecklenburg County dated November 16, 2018, and its accompanying flood insurance rate maps (FIRM), and local or FEMA approved revisions to the FIRM and/or FIS which are adopted by reference and declared to be a part of this chapter and all revisions thereto.

In areas where a preliminary FIRM and preliminary FIS exist, community base flood elevations shown on the preliminary FIRM and preliminary FIS shall be used for local regulatory purposes, if they are

higher than those shown on the effective FIRM and FIS. The initial flood insurance rate maps are as follows for the jurisdictional areas at the initial date:

City of Charlotte dated August 15 1978,

Mecklenburg County Unincorporated Area, dated June 1, 1981.

(Ord. No. 4912, 6-25-2012; Ord. No. 5294, § 1, 1-27-2014; Ord. No. [5988](#), § 1, 7-27-2015; Ord. No. [9399](#), 9-10-2018)

Sec. 9-38. - Floodplain development permit required.

A floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities. The floodplain regulations technical guidance document may be used for illustrative purposes to assist in determining the applicable type of floodplain development permit required.

(Ord. No. 4912, 6-25-2012)

Sec. 9-39. - Compliance.

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable regulations.

(Ord. No. 4912, 6-25-2012)

Sec. 9-40. - Abrogation and greater restrictions.

It is not intended by this chapter to repeal, abrogate, annul or in any way impair or interfere with any existing provisions of laws or ordinances or any rules, regulations or permits previously adopted or issued, or which shall be adopted or issued, in conformity with law, relating to the use of buildings or premises; nor is it intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that, where this chapter imposes a greater restriction upon the use of buildings or premises or requires larger yards, courts or other open spaces than are imposed or required by such existing provisions of laws or ordinances, or by such rules, regulations or permits or by such easements, covenants or agreements, the provisions of this chapter shall control.

(Ord. No. 4912, 6-25-2012)

Sec. 9-41. - Interpretation.

In the interpretation and applications of this chapter, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed to meet the purposes and objectives of this regulation as stated in sections 9-4 and 9-5; and
- (c) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 4912, 6-25-2012)

Sec. 9-42. - Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter 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 chapter shall not create liability on the part of the city, Mecklenburg County, or on any agent, officer or employee thereof for any flood damages that result from reliance on this chapter or by any administrative decision lawfully made hereunder.

(Ord. No. 4912, 6-25-2012)

Sec. 9-43. - Penalties for violation.

Violation of the provisions of this chapter or failure to comply with any of its requirements including violation of conditions and safeguards established in connection with grants of floodplain development permits, variances or ~~special exceptions conditions~~, shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than 30 days. Each day such violation continues shall be considered a separate offense. ~~For appeals, fines do not accumulate during the time period from receipt of a notice of appeal to the Board of Adjustment decision described in Article VI.~~ Nothing herein contained shall prevent the city or the floodplain administrator from taking such other lawful action as is necessary to prevent or remedy any violation, including but not limited to seeking injunctive relief, orders of abatement, or other similar equitable relief.

(Ord. No. 4912, 6-25-2012)

Sec. 9-44—9-60. - Reserved.

#### ARTICLE IV. - ADMINISTRATION AND ENFORCEMENT

Sec. 9-61. - Designation of floodplain administrator.

The city storm water services manager, or his or her designee, is hereby designated as the floodplain administrator. The administration, implementation and the enforcement of the provisions of this chapter shall be allocated through a properly executed, legally binding interlocal agreement.

(Ord. No. 4912, 6-25-2012; Ord. No. [5988](#), § 2, 7-27-2015)

Sec. 9-62. - Floodplain development permits and certification requirements.

- (a) A floodplain development permit is required for any development within the community special flood hazard area (CSFHA) and is subject to the conditions below. The floodplain administrator is authorized to create, and amend from time to time as necessary, a technical guidance document to help explain the application of the provisions of this chapter, specifically the floodplain development permit provisions, through the use of charts and related written materials. The floodplain regulations technical guidance document shall not be a part of this chapter, and shall be solely for illustrative and educational purposes. If there is any discrepancy between the floodplain regulations technical guidance document and this chapter, the provisions of this chapter shall control.
- (b) Floodplain development permits fall into one of two types: General floodplain development permits (GFDP) and individual floodplain development permits (IFDP). If the proposed development activities meet the requirements of the general floodplain development permit, an individual floodplain development permit is not required.

1. *General floodplain development permit.* The intent of the general floodplain development permit (GFDP) is to allow uses or activities in the community special flood hazard area (including the FEMA floodway and community encroachment area) which inherently will not increase FEMA and/or community base flood elevations. The following uses and activities are permitted under a GFDP, without the need for an individual floodplain development permit, floodway engineering analysis or variance, as long as they result in no technically measurable increases in FEMA and/or community base flood elevations. A no-rise certification may be required by the floodplain administrator to demonstrate no technically measurable increases.
    - a. General farming, pasture, horticulture, forestry, wildlife sanctuaries, gardens, lawns, landscaping, mulch 12 inches or less in depth, and other similar activities.
    - b. Utility infrastructure (poles, sewer manholes, vent pipes, underground utilities, etc.), sign poles, non-solid fences, and other similar activities.
    - c. On-grade driveways, trails, sidewalks, boardwalks, roads and road maintenance; storm drainage system construction, repairs and maintenance (major and minor system), and other similar activities. The floodplain administrator must be notified in writing, including a project description and sketch plan, prior to commencement of these activities.
    - d. Interior renovations with a value of less than \$10,000.00, to a structure with its lowest floor below the flood protection elevation. The renovations must meet the requirements of subsection 9-102(f).
    - e. Interior renovations of any value, to a structure with its lowest floor at or above the flood protection elevation. The renovations must meet the requirements of subsection 9-102(f).
  2. *Individual floodplain development permits.* Individual floodplain development permits are required for all projects that do not meet the requirements of a general floodplain development permit. Application for an individual floodplain development permit (IFDP) shall be made by a person with a property interest in the property or with a contract to purchase the property (or their agent) to the floodplain administrator on forms furnished by him or her prior to any development activities proposed to be located within the community special flood hazard area. Requirements for submittal are available from the floodplain administrator.
- (c) Certification requirements.
1. A final as-built elevation certificate (FEMA Form 086-0-33) (for either residential or nonresidential buildings) or floodproofing certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan is required after construction is completed and prior to the issuance of a certificate of occupancy or a temporary certificate of occupancy. 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 or floodproofed elevation of the reference level and all attendant utilities. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification, operational plan, and inspection and maintenance plan 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, operational plan, and inspection and maintenance plan submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to the issuance of a certificate of occupancy or temporary certificate of occupancy. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a certificate of occupancy or temporary certificate of occupancy.
  2. For proposed development in the community or FEMA special flood hazard area but outside of the community encroachment area and the FEMA floodway, a certification from a registered land surveyor or professional engineer that states that no fill material or other development was placed within the FEMA floodway or community encroachment area of any watercourse, will be required prior to issuance of a certificate of occupancy or temporary certificate of occupancy.

3. For proposed development within the community encroachment area or the FEMA floodway, an as-built topographic map prepared by a registered land surveyor or professional engineer will be required prior to issuance of a certificate of occupancy or temporary certificate of occupancy. This is in addition to a floodway engineering analysis or CLOMR that may be required as specified in section 9-102(e).
  4. If a manufactured home is placed within the floodplain and the elevation of the chassis is 36 inches or higher above adjacent grade, an engineered foundation certification is required.
  5. Certification exemptions. The following structures, if located within the floodplain, are exempt from the elevation/floodproofing certification requirements specified in subsections (a) and (b) above:
    - a. Recreational vehicles meeting requirements of section 9-102(h);
    - b. Temporary structures meeting requirements of section 9-102(i); and
    - c. Accessory structures less than 150 square feet meeting requirements of section 9-102(j).
- (d) Permit application requirements.
1. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
    - a. 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;
    - b. The location of the community flood fringe line, community encroachment line, FEMA flood fringe line and FEMA floodway line as shown on the FIRM or other flood map, or a statement that the entire lot is within the special flood hazard area;
    - c. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map;
    - d. The FEMA base flood elevation (BFE), community base flood elevation (CBFE) and flood protection elevation (FPE);
    - e. The existing and proposed location of any watercourse that will be altered or relocated as a result of proposed development;
    - f. Certification of the plot plan by a registered land surveyor or professional engineer as deemed necessary by the floodplain administrator.
  2. Proposed elevations of all development within a community or FEMA special flood hazard area including but not limited to:
    - a. Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
    - b. Elevation in relation to NAVD 1988 to which any nonresidential structure in Zone AE, will be floodproofed; and
    - c. Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.
  3. If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data and an inspection and operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.
  4. A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this chapter are met. These details include but are not limited to:
    - a. 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);



- b. Openings to facilitate automatic equalization of hydrostatic flood forces on walls when solid foundation perimeter walls are used in community special flood hazard area (9-102(c));
  - c. Usage details of any enclosed areas below the lowest floor;
  - d. 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;
  - e. Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received;
  - f. Documentation for proper placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of 9-102(h), (i) are met.
  - g. A description of proposed alteration of a watercourse, 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 alteration of a watercourse.
5. If placing fill within the special flood hazard area, a demonstration of compliance with Section 9 and 10 of the Federal Endangered Species Act (ESA) is required. The demonstration of compliance must be provided to the floodplain administrator.
- (e) Permit requirements. The floodplain development permit shall include, but not be limited to:
- 1. A description of the development to be permitted under the floodplain development permit.
  - 2. The special flood hazard area determination for the proposed development.
  - 3. The flood protection elevation required for the reference level and all attendant utilities.
  - 4. The flood protection elevation required for the protection of all public utilities.
  - 5. All certification submittal requirements with timelines.
  - 6. A statement that no fill material or other development shall encroach into the community encroachment area or FEMA floodway of any watercourse unless the requirements of section 9-102(e) are met.
  - 7. The flood openings requirements per section 9-102(c).
  - 8. A statement that all construction materials below the FPE shall be constructed entirely of flood-resistant materials.

(Ord. No. 4912, 6-25-2012; Ord. No. [9399](#), 9-10-2018)

Sec. 9-63. - Duties and responsibilities of the floodplain administrator.

The floodplain administrator is authorized to and shall perform, but not be limited to, the following duties:

- (a) Reviewing, approving, and issuing all floodplain development permits in a timely manner to assure that the permit requirements of this chapter have been satisfied.
- (b) Reviewing, approving and issuing all documents applicable to letters of map change.
- (c) Advising the permittee that additional federal or state permits may be required; and if specific federal or state permits are known, requiring that copies of such permits be provided and maintained on file with the floodplain development permit.
- (d) Notifying adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to

any alteration of a watercourse and submitting evidence of such notification to the Federal Emergency Management Agency.

- (e) Assuring that within available resources, maintenance is provided within the altered or relocated portion of any altered watercourse so that the flood-carrying capacity is maintained.
- (f) Not issuing a floodplain development permit for encroachments within the community encroachment area and/or the FEMA floodway unless the certification and flood hazard reduction provisions of article V are met.
- (g) Reviewing and recording the actual elevation (in relation to NAVD 1988) of the reference level (including basement) of all new or substantially improved structures, in accordance with section 9-62(c).
- (h) Reviewing and recording the actual elevation (in relation to NAVD 1988) to which the new or substantially improved nonresidential structures have been floodproofed, in accordance with section 9-62(c).
- (i) Obtaining certifications from a registered professional engineer or architect in accordance with subsection 9-102(b) when floodproofing is utilized for a particular non-residential structure.
- (j) Making the interpretation of the exact location of boundaries within the FEMA special flood hazard area or the community special flood hazard area when, for example, where there appears to be conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this chapter. Procedures for changing flood hazard area boundaries and lines depicted on the flood insurance rate maps are identified in the national flood insurance program regulations (44 CFR Parts 59-78).
- (k) Permanently maintain all records that pertain to the administration of this chapter and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (l) Making on-site inspections of projects.
- (m) Serving notices of violation, issuing stop work orders, revoking permits and taking corrective actions.
- (n) Maintaining a copy of the letter of map amendment issued from FEMA when a property owner has received a letter of map amendment (LOMA). (A LOMA is typically applied for and approved when the exact location of boundaries of the FEMA special flood hazard area conflicts with the current, natural topography information at the site.)
- (o) Determining the required information to be submitted with an application for approval of an individual floodplain development permit.
- (p) Reviewing information provided by a property owner or his designated agent for the purpose of making a determination of the total cost of repairs as it relates to a substantial improvement, including a determination of whether a series of repairs, reconstructions or improvements constitute one single alteration such that the total cost of the repairs, reconstructions or improvements will be the cumulative cost from the first alteration.
- (q) Reviewing information provided by a property owner or his designated agent for the purpose of making a determination of whether the proposed construction activities constitute new construction for purposes of this chapter.
- (r) Reviewing and acknowledging FEMA conditional letters of map revision and FEMA letters of map revision.
- (s) Reviewing and approving community conditional letters of map revision and community letters of map revision.
- (t) Making 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.

- (u) Issuing stop-work orders. Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this chapter, 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 reasons for the stoppage and the conditions under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (v) Revoking floodplain development permits. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason 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 misrepresentation made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked. Revoked permits may be resubmitted for approval using the requirements of the ordinance in effect at the time of the original submittal unless they were revoked because of the intentional submission of incorrect information by the permittee or his agent, or under other circumstances where allowing resubmittal using the requirement of the ordinance in effect at the time of the original submittal would not be equitable or consistent with public policy. However, base flood elevations that govern the elevation to which the structure is built must comply with the regulations and flood elevations in effect at the time of application for the building permit.
- (w) Making periodic inspections. The floodplain administrator and each member of his inspections department shall have a right, upon presentation of proper credentials ~~and consent of premises owner or an administrative search warrant to inspect areas not open to the public, 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.
- (x) Providing owners of structures in the floodplain with information concerning their flood risk, and (for structures with the lowest floor below the flood protection elevation) inform potential buyers of substantial improvement restrictions through the recordation of a notice in the property chain of title or other similar notice.
- (y) Obtain actual elevation (in relation to NAVD 1988) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of section 9-62(c).
- (z) Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with the provisions of section 9-62(c).
- (aa) Maintain a current map repository to include, but not limited to, historical and effective FIS report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of section 9-37 of this chapter, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.

(Ord. No. 4912, 6-25-2012; Ord. No. [9399](#), 9-10-2018)

Sec. 9-64. - Corrective procedures.

- (a) *Violations to be corrected.* When the floodplain administrator finds violations of applicable state and local laws and notifies the property owner or building occupant ~~or permittee~~ of the violation, the owner or occupant ~~or permittee~~ shall immediately remedy each violation of law cited in the notice.
- (b) *Actions in event of failure to take corrective action.* If the owner or occupant of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give written notice, by certified or registered mail to the last known address or by personal service that:

1. The building or property is in violation of the floodplain regulations;
  2. A hearing will be held before the floodplain administrator at a designated place and time, not later than 20 calendar days after the date of the notice; at which time the owner or occupant shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
  3. Following the hearing, the floodplain administrator may issue such order to alter, vacate or demolish the building, or to remove fill or other unauthorized encroachment, as appears appropriate.
- (c) *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 floodplain regulations, he shall issue an order in writing to the owner or occupant, requiring the owner or occupant to remedy the violation within such period, not less than 60 calendar days, nor more than 180 calendar days. If the floodplain administrator determines that there is imminent danger to public health, safety or welfare or other property, he may order that immediate corrective action be taken, and if no corrective action is taken as ordered, the floodplain administrator, with the written authorization of the city manager, shall have the authority to enter upon the property to perform the work necessary to correct the condition and the owner or occupant shall be responsible for the actual costs incurred.
- (d) *Appeal.* Any owner or occupant who has received an order to take corrective action may appeal the order to the Charlotte Zoning Board of Adjustment (hereinafter referred to as the "board of adjustment" or "board") as provided in article VI, section 9-82. In the absence of an appeal, the order of the floodplain administrator shall be final. The board of adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm or revoke the order.
- (e) *Failure to comply with order.* If the owner or occupant of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the board of adjustment following an appeal, he/she shall be guilty of a misdemeanor and shall be punished in the discretion of the court. In addition, the owner or occupant shall be subject to civil enforcement as described in article III, section 9-43.

(Ord. No. 4912, 6-25-2012)

Secs. 9-65—9-80. - Reserved.

#### ARTICLE V. - APPEALS AND VARIANCES

Sec. 9-81. - Authority of board of adjustment.

- (a) The board of adjustment shall hear and decide appeals from any order, decision, determination or interpretation made by the floodplain administrator pursuant to or regarding these regulations.
- (b) The board of adjustment shall hear and decide petitions for variances from the requirements of this chapter.

(Ord. No. 4912, 6-25-2012)

Sec. 9-82. - Initiation and filing of appeal.

- (a) An appeal of an order, decision, determination or interpretation made by the floodplain administrator may be initiated by any person aggrieved by any officer, department, board or bureau of the city.
- (b) A notice of appeal in the form prescribed by the board of adjustment must be filed with the board's clerk, with a copy to the floodplain administrator, within ~~29~~thirty (30) days of receipt of the written order, decision, determination or interpretation and must be accompanied by a nonrefundable filing fee as

established by the city council. If the notice of the decision is sent by mail, it is presumed received on the third business day after it is sent. Failure to timely file such notice and fee will constitute a waiver of any rights to appeal under this section and the board of adjustment shall have no jurisdiction to hear the appeal.

(Ord. No. 4912, 6-25-2012)

Sec. 9-83. - Standards and hearing procedure.

- (a) The board of adjustment will conduct the hearing on an appeal of an order, decision, determination or interpretation of these regulations in accordance with its normal hearing procedures as set out in the City Zoning Code.
- (b) At the conclusion of the hearing, the board of adjustment may reverse or modify the order, decision, determination or interpretation under appeal upon finding an error in the application of these regulations on the part of the floodplain administrator who rendered the decision, determination or interpretation. In modifying the decision, determination or interpretation, the board will have all the powers of the officer from whom the appeal is taken.

(Ord. No. 4912, 6-25-2012)

Sec. 9-84. - Initiation and filing of variance petition.

- (a) A petition for variance may be initiated only by the owner of the affected property, or an agent authorized in writing to act on the owner's behalf.
- (b) A petition for a variance from these regulations in the form prescribed by the board of adjustment must be filed with the board's clerk, with a copy to the floodplain administrator, and be accompanied by a nonrefundable filing fee as established by the city council.

(Ord. No. 4912, 6-25-2012)

Sec. 9-85. - Factors for consideration and determination of completeness.

- (a) In passing upon variances, the board of adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and the:
  - 1. Danger that materials allowed to be placed in the floodway as a result of the variance may be swept onto other lands to the injury of others during a community base flood;
  - 2. Danger to life and property due to flooding or erosion damage from a community base flood;
  - 3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage during the community base flood;
  - 4. Importance of the services provided by the proposed facility to the community;
  - 5. Necessity to the facility of a waterfront location, where applicable;
  - 6. Availability of alternative locations, not subject to flooding or erosion damage during a community base flood, for the proposed use;
  - 7. Compatibility of the proposed use with existing and anticipated development;
  - 8. Relationship of the proposed use to the Mecklenburg County Floodplain Management Guidance Document, Mecklenburg County Hazard Mitigation Plans, the Mecklenburg County Greenway Plan, and any other adopted land use plans for that area;

9. Safety of access to the property in times of a community base flood for ordinary and emergency vehicles;
  10. Expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters during a community base flood expected at the site; and
  11. Costs of providing governmental services during and after flood events, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems and streets and bridges.
- (b) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (c) Upon consideration of the factors listed above and the purposes of this chapter, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- (d) Variances may be issued for 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 the variance is the minimum necessary to preserve the historic character and design of the structure.
- (e) Functionally dependent facilities if determined to meet the definition as stated in article II of this chapter, provided provisions of article VI have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
- (f) Any other type of development, provided it meets the requirements of this section.

(Ord. No. 4912, 6-25-2012)

Sec. 9-86. - 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 if the variance would result in any increase in flood levels during the community and/or FEMA base flood discharge unless the requirements of section 9-102(e) are met.
- (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 approval of a floodplain development permit.

(Ord. No. 4912, 6-25-2012; Ord. No. [9399](#), 9-10-2018)

Sec. 9-87. - Standards for granting variance.

- (a) Variances shall only be issued upon:
1. A showing of good and sufficient cause;
  2. A determination that failure to grant the variance would result in exceptional hardship; and
  3. A determination that the granting of a variance will not result in increased flood heights (unless the requirements of section 9-102 (e) are met), additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances.

- (b) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.

(Ord. No. 4912, 6-25-2012; Ord. No. [9399](#), 9-10-2018)

Sec. 9-88. - Miscellaneous conditions.

- (a) In addition to consideration of the items in subsection 9-85(a), if dryland access cannot be obtained, a variance to the requirement for dryland access may be granted by the board of adjustment upon consideration of the following conditions:
1. A determination that all possible alternatives have been investigated in an attempt to provide the safest access from a proposed habitable building to a dry public street.
  2. The existence of a site plan prepared by a licensed land surveyor or professional engineers indicating that the proposed access to habitable buildings on the property poses the least risk from flooding.
- (b) In addition to consideration of the items in subsection 9-85(a), a variance may be issued by the board of adjustment for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following criteria are met:
1. The use serves a critical need in the community.
  2. No feasible location exists for the use outside the special flood hazard areas.
  3. The lowest floor of any structure is elevated above the flood protection elevation or is designed and sealed by a professional engineer or a registered architect to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
  4. There will be no storage of materials or tanks which could flood within the special flood hazard area unless they are contained in a structure as defined in subsection 3 above.
  5. The use complies with all other applicable laws and regulations.
  6. The city has notified the secretary of the state department of crime control and public safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

(Ord. No. 4912, 6-25-2012; Ord. No. [9399](#), 9-10-2018)

Sec. 9-89. - Notification and recordkeeping.

- (a) Any applicant to whom a variance from the FEMA base flood elevation is granted shall be given written notice specifying the difference between the FEMA base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.
- (b) The floodplain administrator shall maintain the records of all appeal actions and report any variances regarding FEMA minimum standards to the Federal Emergency Management Agency and the state upon request.

(Ord. No. 4912, 6-25-2012)

Sec. 9-90. - Appeal from board of adjustment.



- (a) Any person aggrieved by the final decision of the board of adjustment to grant or deny a floodplain development permit shall have 30 days to file an appeal to Mecklenburg County Superior Court, as provided in G.S. ~~160D-406(k) 143-215.57(c)~~.
- (b) Any party aggrieved by the decision of the board of adjustment related to any other order, decision, determination or interpretation of these regulations, including the granting or denial of a variance, shall have 30 days from the effective date if the decision or the receipt of the board's decision, whichever is later, to file a petition for review in the nature of certiorari in Mecklenburg County Superior Court.

(Ord. No. 4912, 6-25-2012)

Secs. 9-91—9-100. - Reserved.

#### ARTICLE VI. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sect. 9-101. - General standards.

In all special flood hazard areas, the following provisions are required:

- (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (b) Manufactured homes shall be anchored to prevent flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, the use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (c) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (d) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (e) All new 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 to the flood protection elevation. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric meter panels/boxes, utility/cable boxes, appliances (i.e., washers, dryers, refrigerator, etc.), hot water heaters, electric wiring, and outlets/switches;
  - 1. Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
  - 2. Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.
  - 3. The cost for replacements that are for maintenance, are not part of a substantial improvement, and that are installed at the original location are not included as substantial improvement costs if the replacements are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the flood protection elevation.
- (f) All new and replacement water supply systems shall be designed to minimize or eliminate the infiltration of floodwaters into the system;
- (g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate the infiltration of floodwaters into the system and discharges from the systems into floodwaters;



- (h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- (i) Any alteration, repair, reconstruction or improvements to a structure which is in compliance with the provisions of this chapter, shall meet the requirements of "new construction" as contained in this chapter;
- (j) Construction of new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted except by variance, in special flood hazard area. 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 above the community base flood elevation or designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy;
- (k) Any new critical facility must be located outside of the 500-year (0.2%) flood fringe area and elevated at least one foot above the 500-year (0.2%) flood elevation or the community base flood elevation whichever is greater. The determination of this flood fringe area and elevation will be provided by the floodplain administrator;
  - 1. Subdivisions—All development proposals submitted for review and approval in accordance with the city subdivision ordinance shall also comply with the following provisions:
    - a. Locate and construct public utilities and facilities, such as sewer, gas, electrical and water systems, to minimize flood damage;
    - b. Construct all new streets located in a community special flood hazard area in accordance with the applicable provisions of the subdivision ordinance;
    - c. Design and construct adequate drainage to reduce exposure to flood hazards; and
    - d. Take such other appropriate measures needed to minimize flood damage.
- (m) When a structure is partially located in a community or FEMA special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (n) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation shall apply.

(Ord. No. 4912, 6-25-2012; Ord. No. [9399](#), 9-10-2018)

Sec. 9-102. - Specific standards.

In all community and FEMA special flood hazard areas where community and FEMA base flood elevation data have been provided, as set forth in section 9-37, the following provisions are required:

- (a) *Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor, elevated to the flood protection elevation. Where an area is impacted by FEMA and/or community base flood elevations from both the Catawba River and a stream flowing into the Catawba River, the higher of the FEMA and/or community base flood elevations will apply.
  - 1. *Community base flood elevation exemption.* Substantial improvement to existing buildings having the lowest floor located at least one foot above the FEMA base flood elevation, but less than the flood protection elevation, are exempt from the requirement to elevate the lowest floor to or above the flood protection elevation. However, the property owner must record an affidavit of floodplain construction below community base flood elevation ("affidavit") with the Mecklenburg County register of deeds office prior to the issuance of a building permit. The affidavit (provided in the floodplain regulations technical guidance

document) will acknowledge that the property owner elected to proceed with the renovations/rehabilitations, and was made aware of the community base flood elevations and that in the future there will be:

- a. Potential for flood losses;
  - b. Potential for mandatory purchase of flood insurance;
  - c. Potential for FEMA substantial improvement rules to apply; and
  - d. No local funds available for flood mitigation assistance (buyouts, elevations, etc).
2. *Non-substantial improvements notice.* Renovations, rehabilitations, repair, reconstruction, or improvement costing between ten percent and 50 percent of the market value of the existing building and said building having the lowest floor below the flood protection elevation, will require the property owner to record a notice of floodplain improvements (provided in the Floodplain Regulations Technical Guidance Document) with the Mecklenburg County Register of Deeds Office prior to the issuance of a building permit.
- (b) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial or nonresidential structure shall meet the requirements for residential construction in subsection 9-102(a) above, or the structure may be floodproofed in lieu of elevation, provided that all areas of the structure below the required 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 effects of buoyancy. 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 section 9-62.

Floodproofing requirements are provided in the floodplain regulations technical guidance document.

1. *Community base flood elevation exemption.* substantial improvement to existing buildings having the lowest floor located at least one foot above the FEMA base flood elevation, but less than the flood protection elevation, are exempt from the requirement to elevate the lowest floor to or above the flood protection elevation. However, the property owner must record an affidavit of floodplain construction below community base flood elevation ("affidavit") with the Mecklenburg County register of deeds office prior to the issuance of a building permit. The affidavit (provided in the floodplain regulations technical guidance document) will acknowledge that the property owner elected to proceed with the renovations/rehabilitations, and was made aware of the community base flood elevations and that in the future there will be:
    - a. Potential for flood losses;
    - b. Potential for mandatory purchase of flood insurance;
    - c. Potential for FEMA substantial improvement rules to apply; and
    - d. No local funds available for flood mitigation assistance (buyouts, elevations, etc).
  2. *Non-substantial improvements notice.* Renovations, rehabilitations, repair, reconstruction, or improvement costing between ten percent and 50 percent of the market value of an existing building having the lowest floor below the flood protection elevation, will require the property owner to record a notice of floodplain improvements (provided in the Floodplain Regulations Technical Guidance Document) with the Mecklenburg County Register of Deeds Office prior to the issuance of a building permit.
- (c) *Elevated buildings.* New construction or substantially improved structures with fully enclosed areas formed by foundation and other exterior walls below the community base flood elevation shall meet the following requirements:
1. Enclosed areas shall not be designed for human habitation and shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection

with the premises. The walls shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

2. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
    - a. Provide a minimum of two openings;
    - b. The total net area of all openings must be at least one square inch for every square foot of enclosed area subject to flooding;
    - c. The bottom of all openings shall be no higher than one foot above adjacent grade at the opening;
    - d. Openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions;
    - e. Openings must be on different sides of the enclosed area if possible; and
    - f. If the building has more than one enclosed area, each must have openings.
  3. Foundation enclosures:
    - a. Vinyl or sheet metal skirting is not considered an enclosure for regulatory and flood insurance rating purposes. Therefore such skirting does not require hydrostatic openings as outlined above.
    - b. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires hydrostatic openings as outlined above to comply with this chapter.
  4. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or enter to the living area (stairway or elevator).
  5. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.
  6. The enclosed area shall be constructed entirely of flood resistant materials at least to the flood protection elevation.
  7. The enclosed area shall not be temperature controlled.
- (d) *Dryland access.* Access to habitable buildings during a flood event is extremely hazardous. Dryland access must be provided to new or substantially improved habitable buildings according to the following criteria:
1. Dryland access is required if any portion of either the habitable building or vehicular access route, connecting the habitable building to a public street, is within the floodplain.
  2. Plans and details for the dryland access must be submitted by a registered professional engineer or surveyor and approved by the floodplain administrator.
  3. If dryland access cannot be obtained, a variance to the requirement for dryland access may be granted by the board of adjustment.
  4. Exemptions from dryland access requirements are allowed for the following conditions:
    - a. Substantial improvement to an existing habitable building where the property does not have dryland access.
    - b. Construction of a new habitable building where both the habitable building and the access route connecting it to a public street, are located entirely outside the community encroachment area and where the property does not have any access to a dry public street. Under this exemption, access from the habitable building to the public street must:

- i. Connect to the highest point of the public street adjacent to the property;
  - ii. Be constructed of gravel, pavement or concrete and be at least 12 feet wide; and
  - iii. Be constructed entirely at or above the elevation of highest point of the public street adjacent to the property.
- (e) *FEMA floodway and community encroachment area.* No encroachments requiring an individual floodplain development permit (section 9-62), including fill, new construction, substantial improvements and other development shall be permitted unless the following conditions are met:
  - 1. FEMA floodway.
    - a. A Floodway Engineering Analysis must be provided by a registered professional engineer and performed in accordance with standard engineering practice indicating that the Encroachment would not result in any (0.00') increase in the FEMA Base Flood Elevations during the occurrence of a FEMA Base Flood, and approved by the Floodplain Administrator; or
    - b. A conditional letter of map revision (CLOMR) from FEMA will be required prior to approval for any encroachment which would cause a rise in the FEMA base flood elevation during the occurrence of the FEMA base flood. A letter of map revision (LOMR) from FEMA must be obtained within six months of completion of the project. Final approval, including certificates of occupancy will not be issued until a letter of map revision is issued.
    - c. Encroachments into the FEMA floodway must also meet the requirements of subsection 9-102(e)2. below.
  - 2. Community encroachment area.
    - a. A Floodway engineering analysis must be provided by a registered professional engineer and performed in accordance with standard engineering practice indicating that the Encroachment would not result in increased flood heights of greater than 0.10' during the occurrence of a community base flood.
    - b. A community conditional letter of map revision (CoCLOMR) from the floodplain administrator is required for any change which would cause a rise of more than 0.10' in the community base flood elevation. Impacted property owners must be notified prior to approval of a CoCLOMR. If approved and constructed, as-built plans must be submitted and approved by the floodplain administrator and a community letter of map revision (CoLOMR) issued within six months of completion of the project. Final approval, including certificates of occupancy will not be issued until a community letter of map revision has been issued.
    - c. Projects impacting existing habitable buildings that increase the community base flood elevation more than 0.00 feet will not be allowed without a variance.
  - 3. Temporary encroachments. Certain temporary encroachments into the community encroachment area and/or the FEMA floodway may be exempt from meeting the requirements of subsections 9-102(e)1. and 2. Examples of temporary encroachments include but are not limited to: sediment control devices including basins, check dams diversions, etc, temporary stream crossings, haul roads/construction entrances, storage of equipment, soil stockpiling. The following conditions that must be met to qualify for the exemption:
    - a. The proposed encroachment shall not be in place more than three months and is renewable for up to one year with written approval from the floodplain administrator. Temporary sediment control devices may be kept in place longer than one year if required by the appropriate regulatory agency, and
    - b. Supporting documentation, including a Floodway Engineering Analysis (if required by the Floodplain Administrator) must be submitted by a registered professional engineer

indicating that the proposed project will not impact any existing habitable building or overtop any roadway surfaces.

- c. The temporary encroachment will require an individual floodplain development permit unless it is included in another IFDP.
  4. No manufactured homes shall be permitted, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and the elevation standards of section 9-102(g) are met.
- (f) *Additions/improvements.*
1. Additions and/or improvements to non-compliant portions of pre-FIRM structures whereas the addition-and/or improvements in combination with any interior modifications to the existing structure are:
    - a. Not a substantial improvement, the addition or improvement must:
      - i. Be designed to minimize flood damages.
      - ii. Not have an enclosed area lower than that of the existing structure.
      - iii. Not add additional non-conforming area.
      - iv. Be constructed of flood resistant materials.
    - b. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards of subsections 9-102(a) and (b).
  2. Additions and/or improvements to post-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure are:
    - a. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
    - b. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards of subsections 9-102(a) and (b).
  3. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall require only the addition to comply with the standards of subsections 9-102(a) and (b).
  4. Customary maintenance and/or repair are not considered additions and/or improvements.
- (g) *Manufactured homes.*
1. New and replaced manufactured homes shall be elevated such that the lowest floor of the manufactured home is elevated at least the flood protection elevation.
  2. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse, or lateral movement, either by certified engineered foundation system, or in accordance with the regulations for mobile homes and modular housing adopted by the commissioner of insurance pursuant to G.S. 143-143.15. Additionally, when the elevation would be met by raising the chassis at least 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height an engineering certification is required.
  3. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivision located within the special flood hazard area. This plan shall be filed with and approved by the floodplain administrator and the local emergency management coordinator.

4. All enclosures or skirting below the lowest floor shall meet the requirements of section 9-102(c).
- (h) *Recreational vehicles.* Recreational vehicles shall either:
1. 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
  2. Meet all the requirements for new construction.
- (i) *Temporary structures.* Prior to issuance of a floodplain development permit for a temporary structure the following requirements must be met:
1. All applicants must submit to the floodplain administrator a plan for removal of such structure(s) in the event of a hurricane or flash flood notification. The plan must include the following information:
    - a. A specified time period for which the temporary use will be permitted. The time specified may not exceed three months, and is renewable up to one year;
    - b. The name, address, and phone number of the individual responsible for the removal of the structure;
    - c. The time frame prior to the event at which a structure will be removed;
    - d. A copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed; and
    - e. Designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be removed.
  2. The above information shall be submitted in writing to the floodplain administrator for review and written approval.
- (j) *Accessory structure.* When accessory structures (sheds, detached garages, etc.), are to be placed in the community and/or FEMA special flood hazard area the following criteria shall be met:
1. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
  2. Accessory structures shall be designed to have a low flood damage potential;
  3. Accessory structures shall be firmly anchored in accordance with section 9-101(a);
  4. Service facilities such as electrical shall be elevated in accordance with subsection 9-101(e);
  5. Accessory structures shall have hydrostatic openings per section 9-102(c)2.;
  6. Accessory structures under 150 square feet do not require an elevation or floodproofing certificate;
  7. Accessory structures shall not be temperature-controlled.
- (k) *Parking spaces.* The lowest level of any parking space required for new or substantially improved non-single family habitable buildings must be no more than 0.5 feet below the community base flood elevation.
- (l) *Tanks.* When gas and liquid storage tanks are to be placed within a special flood hazard area, the following criteria shall be met:
1. *Underground tanks.* Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads

- during conditions of the community and/or FEMA base flood, including the effects of buoyancy assuming the tank is empty;
2. *Above-ground tanks, elevated.* Above-ground tanks in flood hazard areas shall be elevated to or above the flood protection elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the community and/or FEMA base flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
  3. *Above-ground tanks, not elevated.* Above-ground tanks that do not meet the elevation requirements of section 9-102(b) of this chapter shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the community and/or FEMA base flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions;
  4. *Tank inlets and vents.* Tank inlets, fill openings, outlets and vents shall be:
    - a. At or above the flood protection elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the community and/or FEMA base flood; and
    - b. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the community and/or FEMA base flood.
- (m) *Levees.* Levees will be treated as development in the floodplain and are subject to all applicable sections of this chapter.
1. Levees shall not be constructed solely to protect vacant property from flooding.
  2. With the exception of a levee that protects a building or feature that must be located in the vicinity of a stream to be functional such as a stream monitor, water/sewer facility or other uses approved by the floodplain administrator, proposed levees require the approval of the director of Mecklenburg County storm water services, (director), or his designee, regardless of their location within the floodplain.
  3. An open house forum shall be held prior to consideration of approval of a proposed levee. The open house forum will initiate a 30-day comment period for the director or his designee to receive comments from the public. The open house forum shall be conducted by the owner of the proposed levee and the director of Mecklenburg County storm water services, or his designee.
  4. Owners of land adjacent to a proposed levee shall be notified of the open house forum and be provided an opportunity to submit written comments during the 30-day comment period. Notification is to occur through regular mail, as well as a sign being placed at a conspicuous place at the creek and along the public and private road(s) of the properties that would be protected by the proposed levee.
  5. After the end of the 30-day comment period, but no more than 60 days from the end of the comment period, the director shall approve or disapprove the application or request more information from the owner of the levee. If the director determines that the additional information is sufficiently significant, the director may offer an additional 30-day comment period to all parties involved. Consistent with article VI, the director's decision may be appealed to the zoning board of adjustment.
  6. Regardless of whether the proposed levee would meet FEMA certification requirements, floodplain lines and flood elevations will not be modified on the landward side of the levee based on the location, performance or any other aspects of the levee.

7. An instrument must be recorded in the chain of title for all parcels protected by a levee indicating the level of protection provided by the levee and the maintenance requirements as described in subsection 8.g. below.
  8. Levee permitting requirements. Prior to the issuance of a floodplain development permit for construction of a proposed levee, the applicant must submit the following information in writing to the floodplain administrator for review and written approval:
    - a. Plans and/or specifications showing the location of the proposed levee is as far away from the adjacent creek as reasonably possible;
    - b. A copy of the written approval for the levee received from the director of Mecklenburg County storm water services;
    - c. Verification of notification to owners of land adjacent to the proposed levee (those within 500 feet of the property lines of the parcel on which the proposed levee is to be located or within a distance equal to the length of the proposed levee, whichever is greater). Notification is also to include properties that are in the community special flood hazard area and within the hydraulic modeling limits as described below;
    - d. Copies of all written comments received from property owners referenced above;
    - e. If the levee is proposed to be located within the community encroachment area, a floodway engineering analysis must be provided by a registered professional engineer and performed in accordance with standard engineering practice. In addition to the requirements of section 9-102(e) the analysis shall also:
      - i. Show no increase in water surface elevations on any existing habitable building using the current and future discharges for the 10-, 25-, 50-, 100-year frequency flows;
      - ii. Account for all feasible future levees in the area as deemed appropriate by the floodplain administrator;
    - f. A copy of the contract with the entity responsible for construction of the proposed levee;
    - g. A copy of the maintenance plan for the levee which has been certified by a NC professional engineer, which shall include a description of the process by which the levee will be inspected annually and provide for updated plans to be provided annually to property owners and residents intended to benefit from the levee.
  9. Levees constructed on an individual single family residential parcel are exempt from the requirements of subsections 9-102(l)2., 3., 4., 5., 7. and 8.
- (n) *Fill.* Proposed placement of fill within the special flood hazard area requires demonstration of compliance with Section 9 and 10 of the Federal Endangered Species Act (ESA). The demonstration of compliance must be provided to the floodplain administrator.

(Ord. No. 4912, 6-25-2012; Ord. No. [9399](#), 9-10-2018)

Sec. 9-103. - Standards for streams with drainage areas of one square mile or greater not having established community or FEMA base flood elevations and community encroachment areas and FEMA floodways.

All streams in Mecklenburg County with drainage areas of one square mile or greater, have established community and FEMA base flood elevations and community encroachment areas and FEMA floodways.

(Ord. No. 4912, 6-25-2012)



## ARTICLE VII. - LEGAL STATUS PROVISIONS

## Sec. 9-104. - Legal status provisions.

(a) *Effect on rights and liabilities under the existing floodplain regulations.*

1. This chapter in part comes forward by re-enactment of some of the provisions of the floodplain regulations enacted November 27 1972, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this chapter shall not affect any action, suit or proceeding instituted or pending. All provisions of the floodplain regulations of Charlotte enacted on November 27, 1972, as amended, which are not reenacted herein, are repealed.
2. The date of the initial flood damage prevention ordinance for Mecklenburg County is December 4, 1972.

(b) *Effect upon outstanding floodplain development permits.*

1. 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 before the time of passage of this floodplain regulation chapter; provided, however, that when construction is not begun under such outstanding permit within a period of two years subsequent to passage of this chapter or any revision thereto, such permit shall become void and construction or use shall be in conformity with the provisions of this chapter.
2. Any application(s) for a floodplain development permit received prior to the effective date of these floodplain regulations shall be reviewed under the regulations in effect at the time of the initial application.
3. Any incomplete application(s) for a floodplain development permit will be valid only for 90 days after the floodplain administrator has requested additional information from the applicant or his agent. If 90 days after the owner or his agent has received the request for additional information the applicant has failed to submit reasonably complete information that demonstrates a good faith effort to provide all the additional information requested, as determined by the floodplain administrator, the application will become void. Any subsequent submittals will be considered as new applications and reviewed under the regulations in effect on the date the subsequent submittal is received by the floodplain administrator.

(c) *Expiration of floodplain development permits issued after floodplain regulation adoption.*

1. Individual floodplain development permits issued pursuant to this chapter expire two years after the date of issuance unless the work has commenced within two years after the date of issuance, or the issuance of the permit is legally challenged in which case the permit is valid for two years after the challenge has been resolved.
2. Incomplete application(s) for an individual floodplain development permit:
  - a. Will be valid only for 90 days after the floodplain administrator has requested additional information from the applicant or his agent.
  - b. If 90 days after the owner or his agent has received the request for additional information the applicant has failed to submit reasonably complete information that demonstrates a good faith effort to provide all the additional information requested, as determined by the floodplain administrator, the application will become void. Any subsequent submittals will be considered as new applications and reviewed under the regulations in effect on the date the subsequent submittal is received by the floodplain administrator.

(Ord. No. 4912, 6-25-2012)

Chapter 11 - HOUSING<sup>[1]</sup>

Footnotes:

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**Editor's note**— [Ord. No. 9651](#), § 1, adopted October 14, 2019, amended chapter 11 in its entirety to read as herein set out. Formerly, chapter 11 pertained to similar subject matter, and derived from Ord. No. 3784, § 1(Exh. A), adopted January 14, 2008.

**Charter reference**— Unsafe buildings, § 6.61.

**Cross reference**— Administration, ch. 2; buildings and building regulations, ch. 5; fair housing, § 12-106 et seq.

**State Law reference**— Minimum housing standards, G.S. [160D-1201160A-441](#) et seq.

ARTICLE I. - IN GENERAL

Sec. 11-1. - Short title.

The rules and regulations prescribed by this chapter shall be known and may be cited as "The Housing Code of the City of Charlotte" and may be referred to in this chapter as "this code."

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-2. - Findings; purpose.

- (a) Pursuant to G.S. [160D-1201160A-441](#), it is hereby found and declared that there exist in the city's jurisdiction dwellings which are unfit for human habitation due to dilapidation; defects increasing the hazard of fire, accidents and other calamities; lack of ventilation, light and sanitary facilities; and other conditions rendering such dwellings unsafe or unsanitary, dangerous and detrimental to the welfare of the residents of the city.
- (b) In order to protect the health, safety and welfare of the residents of the city as authorized by G.S. [160D-200: 202: 903160A-360 et seq.](#), it is the purpose of this chapter to establish minimum standards and requirements for the initial and continued occupancy of all buildings used for human habitation as expressly authorized by G.S. [160D-1201160A-441](#)—[160D-1212A-450](#). This section does not replace or modify requirements otherwise established for the construction, repair, alteration or use of buildings, equipment or facilities, except as provided in this chapter.
- (c) The purpose of this chapter is to arrest, remedy and prevent the decay and deterioration of places of habitation and to eliminate blighted neighborhoods by providing standards for places of habitation for the protection of the life, health, safety, welfare and property of the general public and owners and occupants of places of habitation.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-3. - Scope.

Except as otherwise provided in this chapter, the sections of this chapter are applicable to all dwellings, roominghouses and lodging establishments within the jurisdiction of the city regardless of when such units were constructed, altered, repaired, or improved.

( [Ord. No. 9651](#), § 1, 10-14-2019)

## Sec. 11-4. - Definitions.

- (a) 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:

*Alteration*, as applied to a building or structure, means a change or rearrangement in the structural parts or in the exit facilities; an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another; and the term "alter" in its various moods and tenses and its participle refers to the making of an alteration.

*Apartment* means a room or suite of rooms occupied or which is intended or designed to be occupied as the home or residence of one individual, family or household for housekeeping purposes.

*Approved*, as applied to a material, device or mode of construction, means approved by the inspector under this chapter or by other authority designated by law to give approval in the matter in question.

*Area:*

- (1) As applied to the dimensions of a building, means the maximum horizontal projected area of the building.
- (2) As applied to the dimensions of a room, means the total square footage of floor area between finished walls.

*Basement* means a story with 50 percent or more of its cubical volume below finished grade.

*Building* means any structure ~~having a roof supported by columns or walls used or intended for supporting or sheltering any use or occupancy built for the support, shelter or enclosure of persons which has enclosed walls for 50 percent or more of its perimeter.~~ The term "building" shall be construed as if followed by the phrase "or part thereof."

*Cellar* means a portion of a building located partly or wholly underground having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

*Close* means securing the building so that unauthorized persons cannot gain entrance to the building.

*Code enforcement official* means the person who has been designated, in writing, by the city manager to enforce this chapter.

*Demolish* means the demolition and removal of the entire building, leaving the property free and clear of any debris and without holes or pockets which may retain water.

*Deteriorated* as it applies to dwellings and roominghouses means that a dwelling or roominghouse is unsafe or unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards of fitness established by this chapter at a cost not in excess of 65 percent of its physical value, as determined by a finding of the inspector.

*Deteriorated* as it applies to lodging establishments means that a lodging establishment is unsafe or unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards of fitness established by this chapter at a cost not in excess of 50 percent of its physical value, as determined by a finding of the inspector.

*Dilapidated*, as it applies to dwellings and roominghouses, means that a dwelling or roominghouse is unsafe or unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards of fitness established by this chapter at a cost not in excess of 65 percent of its physical value, as determined by a finding of the inspector.

*Dilapidated*, as it applies to lodging establishments, means that a lodging establishment is unsafe or unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards of fitness established by this chapter at a cost not in excess of 50 percent of its physical value, as determined by a finding of the inspector.

*Dwelling* means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose.

*Dwelling unit* means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

*Extermination* means the control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the inspector.

*Garbage* means the byproduct of animal or vegetable foodstuffs 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 offensive gases or odors, or which, during or after decay, may serve as breeding or feeding material for flies, insects or animals.

*Governing body* means the city council.

*Habitable room* means a room occupied by one or more persons for living, eating, or sleeping, but does not include bathrooms, toilet compartments, laundries, serving and storage pantries, halls, corridors, basements, and other spaces that are not used frequently or during extended periods.

*Infestation* means the presence, within or around a place of habitation, of any insects, rodents or other pests in such number as to constitute a menace to the health, safety or welfare of the occupants or to the public.

*Inspector* means any person who is authorized by the code enforcement official to conduct inspections for the purpose of enforcing this chapter.

*Lodging establishment* means any hotel, motel, inn, tourist home, or other place providing lodging accommodations for pay. For purposes of this chapter, the term lodging establishment does not include any hotel, motel, inn, tourist home, or other place providing lodging accommodations for pay that is licensed or permitted by the state or the Mecklenburg County Department of Public Health pursuant to G.S. ch. 130A.

*Lodging unit* means a room or suite in any hotel, inn, tourist home, or other place providing lodging accommodations for pay designed for the temporary housing of paying guests. For purposes of this chapter, a lodging unit does not include a room in or suite in any hotel, inn, tourist home, or other place providing lodging accommodations for pay designed for the temporary housing of paying guests that is licensed or permitted by the state or the Mecklenburg County Department of Public Health pursuant to G.S. ch. 130A.

*Manufactured home* and *mobile home* mean a structure as defined in G.S. 143-145(7).

*Multiple dwelling* means any dwelling containing three or more dwelling units.

*Occupant* means any person over one year of age living, sleeping, cooking or eating in, or having actual possession of, a place of habitation.

*Operator* means any person who has charge, care or control of a building or part thereof, in which dwelling units, rooming units or lodging units are let.

*Owner* has the meaning specified in G.S. ~~160D-402; 1101-1202; 1202-160A-442(4)~~.

*Parties in interest* has the same meaning specified in ~~160D-402; 1101; 1202 G.S. 160A-442(5)~~.

*Pier* means a masonry support extending from the ground and footing to and supporting the building or portion thereof. Pier sizes and spacing shall conform to the specifications of the state building code.

*Place of habitation* means any dwelling, dwelling unit, roominghouse, rooming unit, lodging establishment or lodging unit.

*Plumbing* means and includes all of the following supplied facilities and equipment: gas pipes, gas-burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinders), waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catchbasins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.

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

*Public space* means that space within any place of habitation which is open to use by the general public.

*Rooming unit* means a room or group of rooms forming a single habitable unit used or intended for use for living and sleeping, but not for cooking or eating purposes.

*Roominghouse* means any dwelling containing one or more rooming units, in which space is let by the owner or operator to three or more persons who are not husband and wife, son or daughter, mother or father or sister or brother of the owner or operator.

*Rubbish* means combustible and noncombustible waste materials except garbage. The term includes paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, dust, and the residue from the burning of wood, coal, coke and other combustible material.

*State building code* means the North Carolina State Building Code or any superseding regulation.

*Supplied* means paid for, furnished, provided by, or under the control of the owner or operator.

*Temporary housing* means any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system on the same premises for more than 30 consecutive days.

*Tenant* means any person who, alone or jointly or severally with others, occupies a residential building under a lease or holds a legal tenancy in a building.

*Unfit for human habitation* means that conditions exist in a place of habitation which violate or do not comply with one or more of the minimum standards of fitness, or with one or more of the responsibilities of owners and occupants established by this chapter.

- (b) Whenever the terms "dwelling," "dwelling unit," "roominghouse," "rooming unit," "lodging establishment," "lodging unit," "place of habitation" and "premises" are used in this chapter, they shall be construed as though followed by the phrase "or any part thereof."

( [Ord. No. 9651](#), § 1, 10-14-2019)

**Cross reference**— Definitions generally, § 1-2.

**State Law reference**— Similar provisions, G.S. [160D-102; 1101; 1202160A-442](#).

Sec. 11-5. - Buildings unfit for human habitation declared nuisance.

All buildings or portions of buildings which are used or intended for use as places of habitation and which are, under this chapter, unfit for human habitation are hereby declared to be a public nuisance and shall be repaired or rehabilitated to the standards of this chapter or demolished in accordance with the procedure set forth in this chapter.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Secs. 11-6—11-30. - Reserved.

## ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

Sec. 11-31. - Duties of code enforcement official.

The code enforcement official is hereby designated as the officer to enforce this chapter and to exercise the duties and powers prescribed in this chapter. It shall be the duty of the code enforcement official to:

- (1) Investigate the conditions and inspect places of habitation located in the city in order to determine which places of habitation are unfit for human habitation and for the purpose of carrying out the objectives of this chapter with respect to such places of habitation;
- (2) Take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated;
- (3) Keep a record of the results of inspections made under this chapter and an inventory of those places of habitation that do not meet the minimum standards of fitness prescribed in this chapter; and
- (4) Perform such other duties as may be prescribed in this chapter.
- (5) [Comply with the conflict of interest standards as required by G.S. Sec. 160D-109.](#)

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-32. - Powers of code enforcement official.

The code enforcement official is authorized to exercise such powers as may be reasonably necessary or convenient to carry out and effectuate the purpose and provisions of this chapter, including the following powers in addition to others granted:

- (1) Investigate the conditions in the city in order to determine which places of habitation therein are unfit for human habitation;
- (2) Administer oaths and affirmations, examine witnesses and receive evidence;
- (3) Enter upon premises for the purpose of making examinations and inspections, provided, such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (4) Appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this chapter; and
- (5) Delegate any of his functions and powers under this chapter to other officers and other agents.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-33. - Reserved.

Sec. 11-34. - Inspections; duty of owners and occupants.

For the purpose of making inspections, the code enforcement official is hereby authorized to enter examine and survey, at all reasonable times, all places of habitation and premises after sufficiently identifying himself. The owner or occupant of every place of habitation, or the person in charge thereof, shall give the code enforcement official free access to such place of habitation and its premises, at all reasonable times for the purpose of such inspection, examination and survey. Every occupant of a place

of habitation shall give the owner thereof, or his agent or employee, access to any part of such place of habitation and its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this chapter or with any lawful order issued pursuant to this chapter.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-35. - Administrative liability.

Except as may otherwise be provided by statute or local law or ordinance, no city officer, agent or employee charged with the enforcement of this chapter shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this chapter unless he acted with actual malice.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-36. - Responsibilities of owners and occupants.

- (a) *Generally.* The relative responsibilities of the owners, operators and occupants of places of habitation shall be as follows:
- (1) *Public spaces.* Every owner of a building shall be responsible for maintaining, in a reasonably clean and sanitary condition, the shared or public spaces of the building and premises thereof.
  - (2) *Cleanliness.* Every occupant shall be responsible for maintaining, in a reasonably clean and sanitary condition, that part of the dwelling unit and premises which he occupies and controls.
  - (3) *Infestation.* Every occupant of a dwelling or roominghouse shall be responsible for the extermination of any insects, rodents, or other pests infesting the dwelling unit or rooming unit provided, however, that the owner shall be responsible for such extermination if, as a consequence of violations of the standards of fitness, the dwelling unit, rooming unit or lodging unit is not reasonably impervious to pests.
  - (4) *Rubbish and garbage.* Every occupant shall be responsible for disposing of his rubbish and garbage in a clean and sanitary manner by placing it in adequate facilities for such disposal.
  - (5) *Plumbing.* Every owner or operator shall be responsible for providing adequate operable plumbing facilities, including an adequate water heater, and for maintaining such facilities in efficient operating condition; every occupant shall be responsible for exercising reasonable care in the use of such facilities and for maintaining such facilities in a clean and sanitary condition.
  - (6) *Heating.* Every owner or operator shall be responsible for providing adequate operable facilities and appliances supplying heat throughout the dwelling unit, rooming unit or lodging unit in compliance with the standards of fitness; every occupant shall be responsible for exercising reasonable care in the use of such facilities and appliances.
  - (7) *Care of premises.* No occupant shall willfully destroy, deface or otherwise impair any of the facilities or equipment of the owner on the premises which he occupies and controls, or any part of the building itself.
- (b) *Responsibility for violations.* Every owner shall remain ultimately responsible for violations of responsibilities imposed upon him by this chapter or any other ordinance, although a similar responsibility may also be imposed upon the occupant and although the occupant may have agreed to bear the responsibility imposed by ordinance upon the owner.

( [Ord. No. 9651](#), § 1, 10-14-2019)



Sec. 11-37. - Enforcement of responsibilities of owners and occupants.

Upon discovering in any building a condition resulting from noncompliance with section 11-36, the inspector is hereby authorized to order, to take, or otherwise to cause to be taken, such remedial action as is necessary to correct such condition.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-38. - Procedure for enforcement.

- (a) *Preliminary investigation; notice; hearing.* Whenever a petition is filed with the code enforcement official by a public authority or by at least five residents of the city at least 18 years of age charging that any place of habitation is unfit for human habitation, or whenever it appears to the code enforcement official, upon inspection, that any place of habitation is unfit for human habitation, he 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 place of habitation a complaint stating the charges and containing a notice that a hearing will be held before the code enforcement official at a place therein fixed, not less than ten nor more than 30 days after the serving of such complaint. The owner or any party in interest shall have the right to correct the violation or 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. Notice of such hearing shall also be given to at least one of the persons signing a petition relating to such place of habitation. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in the hearing before the code enforcement official.
- (b) *Procedure after hearing.* After the notice and hearing provided for in subsection (a), the code enforcement official shall state in writing his determination whether such place of habitation is unsafe or unfit for human habitation and, if so, whether it is deteriorated or dilapidated.
- (1) If the code enforcement official determines that the place of habitation is deteriorated, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner and parties in interest thereof an order directing and requiring the owner to repair, alter, and improve such place of habitation to comply with the minimum standards of fitness established by this chapter within a specified period of time, not to exceed 90 days. Such order may also direct and require the owner to vacate and close such place of habitation while such repairs, alterations and improvements are being made. Upon application by the owner of a dwelling within the specified period of time, the code enforcement official may grant extensions of up to one year if such dwelling is occupied by its owner, or up to 180 days for all other places of habitation, for good cause shown.
  - (2) If the code enforcement official determines that a place of habitation is dilapidated, he shall state in writing his findings of fact to support such determination and shall issue and cause to be served upon the owner and parties in interest thereof an order directing and requiring the owner to vacate and close the place of habitation and to remove or demolish the place of habitation within a specified period of time, not to exceed 90 days, unless the owner elects to proceed under the procedures set forth in this subsection, or unless an application for an extension of up to 90 days is applied for by the owner and granted by the code enforcement official for good cause shown.
  - (3) Within ten days from the date of the order determining that the building is dilapidated, the owner may notify the code enforcement official in writing of his intent to make such repairs or alterations to the place of habitation so as to comply with the minimum standards of fitness. Upon receipt of an owner's written intent to repair the place of habitation within the time provided in this subsection, the code enforcement official shall issue supplemental order directing the owner to commence and complete the repairs or alterations necessary to comply with the minimum standards of fitness. The code enforcement official shall allow a reasonable period of time for the owner to make such repairs or alterations, but in no event shall the period of time allowed for such repairs or alterations be less than 30 days nor more than 90 days unless an extension of up to



90 days is granted by the code enforcement official for good cause shown. Upon application by the owner within the specified period of time, the code enforcement official may grant extensions of up to one year for an owner-occupied dwelling, or up to 180 days for all other places of habitation for good cause shown.

- (4) If the owner fails to give notice of either an intent to repair as provided in this subsection or notice of appeal of the decision of the code enforcement official to the housing appeals board within the time specified for such an appeal, the code enforcement official shall proceed in accordance with subsection (c)(1).
  - (5) The code enforcement official shall cause the complaint and notice issued under subsection (a) and the findings of fact and order issued under this subsection to be filed in the notice of lis pendens in the office of the clerk of the county superior court. From the date and time of indexing by the clerk of court, the complaint and notice of hearing or findings of fact and order shall be binding upon the successors and assigns of the owners of and parties in interest in the place of habitation. A copy of the notice of lis pendens shall be served upon the owners and parties in interest in the place of habitation at the time of filing in accordance with G.S. ~~160D-1206~~~~160A-445~~. The notice of lis pendens shall remain in full force and effect until it is cancelled. The code enforcement official shall have the authority to notify the clerk of court to cancel the notice of lis pendens when the code enforcement official determines that there no longer is a need for the notice to remain in effect.
  - (6) Whenever a determination is made pursuant to subsection (b)(2) that a dwelling must be vacated and closed or removed or demolished, under this section, notice of the order shall be given by first class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the code enforcement official, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The code enforcement official or the city clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the code enforcement official to wait 45 days before causing removal or demolition.
- (c) *Failure to comply with order.* Procedures for the failure to comply with the order are as follows:
- (1) *In personam remedy.* If the owner of any deteriorated place of habitation shall fail to comply with an order of the code enforcement official to repair, alter, or improve the place of habitation within the time specified therein, or if the owner of a dilapidated place of habitation shall fail to comply with an order of the code enforcement official to vacate and close, and remove or demolish the place of habitation within the time specified therein, the code enforcement official may submit to the city council, at its next regular meeting, a resolution directing the city attorney to petition the superior court for an order directing such owner to comply with the order of the code enforcement official as authorized by G.S. ~~160D-305-1208~~ ~~160A-446(g)~~.
  - (2) *In rem remedy.* After failure of an owner of a deteriorated place of habitation, or of a dilapidated place of habitation to comply with an order of the code enforcement official within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in subsection (c)(1), the code enforcement official may submit to the city council an ordinance ordering the code enforcement official to cause such place of habitation to be repaired, altered, improved or vacated and closed and removed or demolished, as provided in the original order of the code enforcement official and, pending such removal or demolition, to placard such place of habitation as provided by G.S. ~~160D-1203~~ ~~160A-443~~(4), (5) and section 11-40.
  - (3) *Civil action to remove occupant.* If any occupant fails to comply with an order to vacate a place of habitation the code enforcement official may file a civil action in the name of the city to remove such occupant. Such action shall be filed and conducted in accordance with G.S. ~~160D-1203(8)~~ ~~160A-443(7)~~.

- (d) *Appeals from order of code enforcement official.* An appeal from any decision of the code enforcement official may be taken by any person aggrieved thereby. Any appeal from the code enforcement official must be taken within ten days after the rendering of the decision or service of the order by filing with the code enforcement official and with the housing appeals board a notice of appeal ~~that~~<sup>which</sup> shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the code enforcement official shall forthwith transmit to the housing appeals board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the code enforcement official refusing to allow the person aggrieved thereby to do any act, the code enforcement official's decision shall remain in force until modified or reversed. When an appeal is from a decision of the code enforcement official requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing of the board unless the code enforcement official certifies to the board, after the notice of appeal is made, that, by reason of the fact stated in the certificate, a copy of which shall be furnished to the appellant and other parties in interest, a suspension of this requirement would cause imminent peril to life or property. When the code enforcement official issues such a certificate, the requirement shall not be suspended except by a restraining order which may be granted for due cause shown upon not less than one day's written notice to the code enforcement official by the board or by a court of record upon petition made pursuant to G.S. ~~160D-305-1208(f)~~ <sup>160A-446(e)</sup> and subsection (e). The board shall fix a reasonable time for the hearing of all appeals and cross appeals, shall give due notices to all parties in interest and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney and present evidence. The board may reverse, affirm, wholly or partly, or modify the decision or order appealed from and may make such decision and order as in its opinion ought to be made in the matter. All board meetings shall have a quorum present of at least three members, and the vote of at least three members shall be required for a decision on an appeal or cross appeal. The board shall have the power in passing upon appeals and cross appeals where there are practical difficulties or hardships to adapt the application of this chapter to the necessities of the individual case to the end that the general purposes of the law and justice shall be done. Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the service of the decision of the board on the person who filed the appeal.
- (e) *Petition to superior court by owner.* Any person aggrieved by an order issued by the code enforcement official or a decision rendered by the board shall have the right, within 30 days after issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining the code enforcement official pending a final disposition of the cause, as provided by G.S. ~~160D-305-1208(d)~~ <sup>160A-446(f)</sup>.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-39. - Methods of service of complaints and orders.

- (a) Complaints or orders issued by the code enforcement official pursuant to this chapter shall be served upon persons either personally or by ~~registered or~~ certified mail. When service is made by ~~registered or~~ certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
- (b) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the code enforcement official in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the code enforcement official makes an affidavit to that effect, the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under this chapter. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-40. - In rem action by code enforcement official; placarding.

- (a) After the failure of an owner of a place of habitation to comply with an order of the code enforcement official issued pursuant to this chapter and upon adoption by the city council of an ordinance authorizing and directing him to do so, as provided by G.S. [160D-1203\(4\)](#)~~160A-443(5)~~ and subsection 11-38(c), the code enforcement official shall proceed to cause such place of habitation to be repaired, altered or improved to comply with the minimum standards of fitness established by this chapter, or to be vacated and closed and removed or demolished, as directed by the ordinance of the city council, and shall cause to be posted on the main entrance of such place of habitation a placard with the following words: "This building is unfit for human habitation, the use or occupation of this building for human habitation is prohibited and unlawful."
- (b) Each such ordinance shall be recorded in the office of the register of deeds in the county wherein the property is located and shall be indexed in the name of the property owner in the grantor index as provided by G.S. [160D-1203\(4\)](#)~~160A-443~~.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-41. - Costs a lien on premises.

- (a) As provided by G.S. [160D-1203\(7\)](#)~~160A-443(6)~~ and section 6.61 of the Charter, the amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the code enforcement official pursuant to section 11-40 or 11-46 shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by G.S. 160A-216 *et seq.* and section 6.61 of the Charter.
- (b) If a dwelling or other structure is removed or demolished by the code enforcement official, he shall sell the materials of the dwelling or other structure and any personal property, fixtures, or appurtenances found in or attached to the dwelling or other structure and shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining shall be deposited in the superior court by the code enforcement official, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-42. - Alternative remedies.

Neither this chapter nor any of its sections shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their abatement by summary action or otherwise. Enforcement by any remedy provided in this chapter shall not prevent enforcement by any other remedy provided in this chapter or in other ordinances or laws.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-43. - Housing appeals board.

- (a) There is hereby continued a housing appeals board to which appeals may be taken from decisions or orders of the code enforcement official, as provided in this chapter. The board shall consist of five members to be appointed and to serve as provided in this section.

- (b) Appointments and qualifications of board members shall be as follows:
- (1) The mayor shall appoint two members, one of whom must be a person who owns and occupies as his principal residence a dwelling located in the city within a city area.
  - (2) The city council shall appoint three members, one of whom must be a person who maintains his principal place of residence in a rental dwelling that is located within the city within a city area and one of whom must be person who owns, or is employed by, a firm that is engaged in the construction or management of housing.
  - (3) A member who qualifies for membership under subsections (b)(1) or (b)(2) at the time of his appointment shall continue to be so qualified for the remainder of his term, regardless of any change in circumstances relating to such qualification.
  - (4) For purposes of this subsection, the term "city within a city area" means the area that has been designated as such by the Charlotte-Mecklenburg Planning Commission. If there should cease to be such a designation, the term shall mean the area that was last designated as such.
- (c) Appointments of members of the housing appeals board shall be for staggered terms.
- (d) Each appointment of a member shall be for a term of three years, except as provided in subsection (e). Every member of the board shall continue to hold office until his successor is chosen and qualified. After the appointments provided for in subsection (c), each member shall be appointed to succeed a specified predecessor, and the term of the new member shall begin as of the scheduled date for termination of the predecessor's term, even if the predecessor has held over, under the authority of this subsection, beyond the scheduled termination date. Each member's successor shall be appointed by the authority (mayor or city council) that appointed the departing member. This subsection shall not apply when a member leaves office prior to the scheduled end of his term.
- (e) When a board member leaves office prior to the scheduled end of his term, the authority (mayor or city council) that appointed the departing member shall appoint his replacement. The term of such an appointment shall be for the remaining term of the departing member.
- (f) The board shall have power to elect its own officers, to fix the times and places of its meetings, and to adopt necessary rules of procedure and any other rules and regulations which it deems necessary for the proper discharge of its duties. Any rules of procedure adopted by the board shall be consistent with the provisions of G.S. chapter 160D and kept on file at the office of the City Clerk and posted on the City of Charlotte website. The board shall perform the duties prescribed by this chapter and shall keep an accurate record of all its proceedings as required by G.S. Sec. 160D-308. No person may serve more than two terms as a member of the board. Attendance at meetings and continued service on the board shall be governed by the attendance policies established by the city council.
- (g) Each member shall take an oath of office before starting their duties as required by G.S. Sec. 160D-309.
- (h) Each member shall comply with the conflict of interest standards as specified in G.S. Sec. 160D-109.

( Ord. No. 9651, § 1, 10-14-2019)

Sec. 11-44. - Conflict with other provisions.

If any provision, standard or requirement of this chapter is found to be in conflict with any other section of this chapter or any provision of any other city ordinance, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the city shall prevail.

( Ord. No. 9651, § 1, 10-14-2019)

Sec. 11-45. - Violations; penalty.

- (a) It shall be unlawful for the owner of any place of habitation to fail, neglect or refuse to repair, alter or improve the place of habitation or to vacate and close and remove or demolish the place of habitation, upon order of the code enforcement official duly made and served as provided in this chapter, within the time specified in such order; each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any place of habitation, with respect to which an order has been issued pursuant to subsection 11-38(b), to occupy or permit the occupancy of the place of habitation after the time prescribed in such order for its repair, alteration or improvement or its vacation and closing, and removal or demolition, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
- (b) Any owner of a:
- (1) Dwelling, except an owner who occupies the dwelling as his principal place of residence, or
  - (2) Roominghouse, except when the owner resides in the roominghouse,
- who fails to comply with an order of the code enforcement official to repair, alter or improve the dwelling or roominghouse or to vacate and close and remove or demolish the dwelling or roominghouse within the time specified in the order, shall be subject to a civil penalty in the amount of \$100.00 for the first day of noncompliance and \$100.00 for each day thereafter until the dwelling is brought into compliance with the order. The civil penalty may be recovered by the city in a civil action in the nature of a debt if the owner does not pay the penalty within 30 days after the initial day of noncompliance.
- (c) Any owner of a lodging establishment who fails to comply with an order of the code enforcement official to repair, alter or improve the lodging establishment, within the time specified in the order, shall be subject to a civil penalty in the amount of \$1,000.00 for the first day of noncompliance and \$100.00 for each day thereafter until the lodging establishment is brought into compliance with the order. The civil penalty may be recovered by the city in a civil action in the nature of a debt if the owner does not pay the penalty within 30 days after the initial day of noncompliance.
- (d) The code enforcement official in his discretion may agree, in writing only, to release, in whole or in part, an owner from liability for the civil penalty imposed pursuant to subsections (b) and (c) if the owner voluntarily agrees, as consideration for the release, to convey to the city, or to some other person or organization, the property from which the civil penalty arose upon such terms and conditions as the owner and the code enforcement official might agree.
- (e) It shall be unlawful for the owner of a place of habitation that is imminently dangerous to health or safety to collect rent from another person who occupied the place of habitation at the time it became imminently dangerous to health or safety or to permit any other person to begin occupancy of such place of habitation. A place of habitation is imminently dangerous to health or safety if it is in violation of any one of the following minimum standards of fitness.
- (1) Rotted, fire damaged, or insect damaged steps, flooring, or structural supports, as provided in subsections 11-79(b) and 11-83(b)(1).
  - (2) Fire hazard in a chimney that is in use, as provided in section 11-81.
  - (3) Unsafe wiring, as provided in subsection 11-82(e).
  - (4) Unsafe ceiling or roof, as provided in subsections 11-83(e)(1), (e)(7), (f)(1), (f)(5).
  - (5) No potable water supply, as provided in subsection 11-80(h).
  - (6) No operable heating equipment, as required by subsection 11-81(b), during November, December, January, February, or March.
  - (7) No operable sanitary facilities, as provided in subsections 11-80(i) and (j).
  - (8) Severe rat infestation where the place of habitation is not impervious to pests, as provided in subsection 11-84(c).

- (9) No safe, continuous, and unobstructed exit from the interior of the building to the exterior at street or grade level, as provided in subsection 11-79(c).
- (10) No access provided to all rooms within a dwelling unit without passing through a public space, as provided in subsection 11-77(m).
- (11) Any window or door providing access to any dwelling unit or rooming unit lacking an operable lock or the owner failing to provide a change of locks or keys to a new tenant of such dwelling unit or rooming unit, as provided in subsections 11-77(o) and 11-78(g).
- (12) No operable smoke detector or alarm, as provided in subsection 11-77(q).
- (13) Every place of habitation shall comply with the current county health regulations governing carbon monoxide alarms, [as provided in subsection] 11-77(r)
- (g) It shall be unlawful for the owner of a place of habitation who has received a complaint and notice authorized by subsection 11-38(c) with regard to the place of habitation, or has gained knowledge by other means that the code enforcement official has issued such a complaint and notice regarding the place of habitation to permit another person, other than a person who occupied the place of habitation at the time of the issuance of the complaint and notice, to occupy the place of habitation without first informing such person, in writing, of the issuance of the complaint and notice and providing him with a copy of such complaint and notice.
- (h) It shall be unlawful for the owner of a place of habitation who has received a final code enforcement order, after all periods for appeal to the housing appeals board and petitions to the court have expired pursuant to section 11-38, to fail to comply with such order. However, with respect to an order to vacate and close and remove or demolish the place of habitation, no civil penalty shall accrue, notwithstanding subsections (b) and (c), nor shall any criminal liability attach until 30 days following the relocation of the occupants of the places of habitation.
- (i) In addition to any other penalty imposed by this chapter, any person who violates subsection (e), (g), or (h) shall be guilty of a misdemeanor and shall be punished as provided in section 2-21. Except as provided in this subsection, there shall not be any criminal liability for violation of any section of this chapter.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-46. - Abandoned structures.

- (a) Any abandoned structure that is a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities shall be repaired, closed, or demolished. It shall be unlawful for the owner of an abandoned structure to allow the abandoned structure to become or to remain a health or safety hazard as defined in this subsection.
- (b) The code enforcement official shall have the authority to attempt to accomplish the repair, closing, or demolition of unsafe abandoned structures through the procedures set out in section 11-38, except that if the estimated cost to repair the structure is 50 percent or more of its value, the structure shall be considered dilapidated, and the code enforcement official shall order that it be demolished and removed.

Upon the failure of the owner of an unsafe abandoned structure to comply with an order of the code enforcement official to repair, close, or demolish such structure, the code enforcement official shall present the matter to the city council. If the city council finds that the abandoned structure is unsafe pursuant to subsection (a), it may adopt an ordinance ordering the code enforcement official to cause such abandoned structure to be repaired, closed, or demolished. Each such ordinance shall be recorded as provided in section 11-40, and the cost of any repair, closing, or demolition caused to be made by the code enforcement official shall be a lien on the premises as provided in section 11-41.



- (c) For purposes of subsections (a) and (b), the term "abandoned structure" shall mean any structure that has not been occupied or used, by its owner or by some person acting under authority of its owner, for a continuous period of 30 days or longer.
- (d) If the city council shall have adopted an ordinance, or the code enforcement official shall have issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subsection 11-38(b)(1), and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order, if the city council shall find that the owner has abandoned the intent and purpose to repair, alter, or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals, and welfare of the city in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this state, the city council may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:
  - (1) If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding 50 percent of the then-current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
  - (2) If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding 50 percent of the then-current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

( [Ord. No. 9651](#), § 1, 10-14-2019)

#### Sec. 11-47. - Unsafe buildings.

- (a) When it appears to the code enforcement official that a building is especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, the code enforcement official may exercise the powers granted by G.S. ~~160D-1119~~~~160A-426~~—~~160D-1122~~~~160A-429~~.
- (b) An order issued by the code enforcement official under the authority of this section shall be certified by the city clerk and filed in the record of lis pendens, as provided in section 6.61 of the Charter.
- (c) Upon the failure by the owner of the affected building to comply with an order issued under the authority of this section, further enforcement of the order shall be pursuant to the procedures provided in sections 11-38(c)—(e), 11-40 and 11-41.
- (d) In addition to other authority granted by this section, the code enforcement official may exercise the authority granted by G.S. ~~160D-1119~~~~160A-426(b), (c)~~.

( [Ord. No. 9651](#), § 1, 10-14-2019)

#### Secs. 11-48—11-75. - Reserved.

### ARTICLE III. - MINIMUM STANDARDS OF FITNESS FOR PLACES OF HABITATION

#### Sec. 11-76. - Compliance with article prerequisite to occupancy.

- (a) Every place of habitation used as a human habitation, or held out for use as a human habitation, shall comply with all of the minimum standards of fitness and all of the requirements of this article. No person shall occupy as owner-occupant, or let to another for occupancy or use as a human habitation, any

place of habitation which does not comply with all of the minimum standards of fitness for human habitation and all of the requirements of this article. All work shall be done in a workmanlike manner.

- (b) All structural repairs or alterations to places of habitation and all new construction of places of habitation shall be performed in compliance with all applicable requirements of the state building code.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-77. - Space and use.

- (a) At least one room in the dwelling shall contain not less than 150 square feet.
- (b) A kitchen-dining room combination, if any, shall be not less than 100 square feet.
- (c) A first bedroom, if any, shall be not less than 100 square feet.
- (d) A second bedroom, if any, shall be not less than 70 square feet.
- (e) There shall be at least 70 square feet in each habitable room.
- (f) There shall be at least 150 square feet of floor space in habitable rooms for the first occupant in each dwelling unit; at least 100 square feet for each additional occupant each of the next three occupants; and at least 50 square feet for each additional occupant over the number of four. (Children one year of age and under shall not be counted.)
- (g) There shall be at least 80 square feet of bedroom floor space for the first occupant; at least 20 square feet for the second occupant; and at least 30 square feet for each additional occupant over the number of two. (Children one year of age and under shall not be counted.)
- (h) The provisions of subsections (a) through (g) shall not apply to lodging establishments. If the code enforcement official determines, in his sole discretion, that the occupancy of a habitable room in a lodging establishment is such that it contributes to an unsafe and unsanitary condition of the habitable room, then such lodging establishment shall be in violation of this chapter.
- (i) Those habitable rooms which must be included to meet the foregoing minimum space requirements shall be at least seven feet wide in any part with at least one-half of the floor area having a ceiling height as prescribed by the state building code. Not more than 50 percent of the required area may have a sloped ceiling less than the height prescribed by the state building code with no portion of the required areas less than five feet in height. If any room has a furred ceiling, the prescribed ceiling height is required for at least 50 percent of the area thereof, but in no case shall the height of the furred ceiling be less than that prescribed by the state building code.
- (j) No basement shall be used as a habitable room or housing unit unless:
  - (1) The floor and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness and condensation.
  - (2) The total window area in each room is equal to at least the window area sizes prescribed for habitable rooms. (See section 11-78 for light and ventilation requirements.)
  - (3) Such required window area is located entirely above the grade of the ground adjoining such window area unless provided with adequate window wells.
  - (4) The total of openable window area in each room is equal to at least the area prescribed for habitable rooms (see section 11-78 for light and ventilation requirements), except where there is supplied some other device affording adequate ventilation and approved by the inspector.
- (k) Toilet and bathing facilities shall be enclosed.
- (l) There shall be no holes or excessive cracks in walls, ceilings, outside doors or outside windows.
- (m) Access shall be provided to all rooms within a dwelling unit without passing through a public space.



- (n) Doors shall be provided at all doorways leading to bedrooms, toilet rooms, and bathrooms and all rooms adjoining a public space. All interior doors and hardware shall be in good condition, and free from defects or damage which prevents the door from operating as intended.
- (o) All doors providing access to any place of habitation shall have operable locks, and, in the case of dwellings and dwelling units, the owner or operator shall provide a change of locks or keys for new tenants.
- (p) All doors opening to the outside shall be reasonably weathertight.
- (q) There shall be installed in every dwelling unit, rooming unit and lodging unit an operable smoke detector or alarm.
- (r) Every dwelling and roominghouse shall comply with the current county health regulations governing carbon monoxide alarms.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-78. - Light and ventilation.

- (a) The window-glazed area in each habitable room of a dwelling or dwelling unit shall not be less than eight percent of the floor area or eight square feet, whichever is greater.
- (b) The operable window area in each habitable room in a dwelling shall be equal to at least one-half of the minimum allowance window area and facing directly to the outside for ventilation unless the room is served by an approved ventilating system.
- (c) All windows and doors opening to the outside shall be adequately screened unless the room is served by an approved ventilating system. Screens shall fit openings snugly, and the screen mesh shall not be torn or otherwise defective.
- (d) Screens shall not be permanently fixed to the window frame or sash.
- (e) In bathrooms containing more than one water closet, the window area shall be at least three square feet of glazed area. Where adequate windows cannot be provided, metal ducts with at least 72 square inches in open area and extending from the ceiling through the roof, or mechanical ventilation to the outside, shall be provided
- (f) Every public hall and inside stairway in every multifamily dwelling or place of habitation shall be adequately lighted at all times with an illumination of at least three footcandles per square foot in the darkest portion of the normally traveled stairs and passageways.
- (g) All windows and doors in dwellings and roominghouses opening to the outside shall be reasonably weathertight, free of cracked or broken glass, and shall have operable locks. If the windows in a lodging establishment are designed to open to the outside, such windows shall be reasonably weathertight and shall have operable locks. Any glazed area shall be glass.
- (h) Window bars, grills, or other impediments to escape in case of fire shall not be permitted at habitable room windows, except as permitted by the state building code.
- (i) Kitchen exhaust equipment shall be operable, maintained, and vented to the exterior. Ductless range hoods are not required to be vented to the exterior.
- (j) Clothes dryer vents and ducts shall terminate on the exterior where possible. Screens of a type that may trap lint shall not be installed at the termination. All ductwork shall be properly supported and free of obstructions which impede air flow.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-79. - Exit requirements.

- (a) There shall be two main exits, each at least 30 inches wide and six feet eight inches high, easily accessible to the occupants of each dwelling or dwelling unit. All exit doors must be easily operable and remotely located. (See the state building code for exemptions.)
- (b) Platforms, steps, and/or handrails provided to serve exits shall be maintained in safe condition.
- (c) There shall be a safe, continuous and unobstructed exit from the interior of the building to the exterior at street or grade level.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-80. - Plumbing facilities.

- (a) All plumbing to be installed shall be installed in accordance with the state building code.
- (b) All plumbing shall be connected to the city sanitary sewer system where available or to another approved system.
- (c) All fixtures shall be operable.
- (d) There shall be no broken water closet bowls.
- (e) Water closets shall not be loose or leaking. Water closet flush mechanisms shall be maintained in operating condition.
- (f) No leaks shall be in a shower stall floor and/or wall.
- (g) There shall be facilities for furnishing adequate hot water to each tub or shower, lavatory, and kitchen sink. All water heaters shall be in good condition, operate as intended, and comply with the current state building code and the requirements of the home inspector licensure board for water temperature and flow.
- (h) There shall be installed a potable water supply inside the building for each dwelling unit.
- (i) There shall be installed a water closet, tub or shower, lavatory and sink for each dwelling unit. The kitchen sink shall be at least 12 inches by 16 inches by six inches. Kitchen and bathroom faucets shall be sealed to prevent leakage.
- (j) There shall be separate toilet facilities for each dwelling unit.
- (k) Toilet and bathing facilities shall be protected from the weather.
- (l) All water piping shall be protected from freezing by proper installation in protected space.
- (m) Soil and water pipes shall be supported with no broken or leaking pipes.
- (n) Every water closet compartment floor surface and bathroom floor surface shall be so constructed and maintained as to be reasonably impervious to water and so as to permit such floor to be readily kept in a clean and sanitary condition.
- (o) A lodging unit shall not be required to have a kitchen sink, but if such lodging unit contains a kitchen sink it shall meet the requirements of this section.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-81. - Heating facilities, ventilation, and air conditioning.

- (a) Every building and every dwelling unit shall be weatherproof and capable of being adequately heated, and the heating equipment in every dwelling or dwelling unit shall be maintained in good order and repair.

- (b) Every place of habitation shall have facilities for providing heat in accordance with either of the following:
- (1) *Central and electric heating systems.* Every central or electric heating system shall be of sufficient capacity so as to heat all habitable rooms, bathrooms and water closet compartments in every place of habitation to which it is connected to a minimum temperature of 68 degrees Fahrenheit measured at a point three feet above the floor with an outside temperature of 20 degrees Fahrenheit.
  - (2) *Other heating facilities.* Where a central or electric heating system is not provided, or is inadequate, each dwelling and dwelling unit shall be provided with sufficient chimneys flues, or gas vents, with heating appliances connected, so as to heat all habitable rooms to a minimum temperature of 68 degrees Fahrenheit measured three feet above the floor with an outside temperature of 20 degrees Fahrenheit.
- (c) All electric, gas and oil heating equipment installed on the premises shall be listed by Underwriters' Laboratories, Inc., or American Gas Association and installed in accordance with the provisions of the state heating code.
- (d) There shall be no loose bricks in chimneys.
- (e) There shall be no holes in flues.
- (f) There shall be no hanging masonry chimneys.
- (g) Thimbles shall be grouted in tightly.
- (h) Thimbles shall not be broken or cracked.
- (i) Thimbles shall be high enough for the stovepipe to rise one-quarter inch per foot minimum.
- (j) The hearth shall be at least 16 inches deep and eight inches beyond each side of the fireplace opening.
- (k) No combustible materials shall be within seven inches of the top and seven inches of either side of the fireplace opening.
- (l) Fireplaces shall be closed with masonry when the chimney is used as a flue for a stove.
- (m) A stove shall be within six feet of a thimble serving it.
- (n) No combustible material shall be within 12 inches of a stovepipe.
- (o) No stovepipe shall be through combustible walls.
- (p) In multiple dwellings and roominghouses with central heat, the furnace room shall be enclosed with material having at least a one-hour fire protection rating.
- (q) Fireplaces, freestanding kerosene heaters, freestanding electric space heaters, and vent free gas appliances may be used for supplementary heating only and not for basic heat.
- (r) When air conditioning or cooling facilities are provided, such facilities and components shall be properly installed, safely operable, and maintained to perform as originally intended.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-82. - Electrical facilities.

- (a) In places of habitation, no receptacles, ceiling fixtures, or other fixtures shall be hanging loose.
- (b) All switches and receptacles shall be safely operable.
- (c) Every habitable room shall contain not less than two wall-type electrical convenience receptacles.
- (d) There shall be installed in every habitable room, bathroom, laundry room, hallway, stairway and furnace room at least one supplied ceiling or wall-type electrical light fixture; provided, further, that the

ceiling light fixture may be omitted in the living room and bedrooms, provided three electrical convenience receptacles are installed, one of which is controlled from a wall switch.

- (e) There shall be no unsafe wiring.
- (f) There shall be no drop or extension cords in excess of six feet in length.
- (g) No circuits shall be overloaded.
- (h) Fuses shall be sized correctly and not bridged out.
- (i) All wiring to be installed shall be in accordance with the National Electrical Code.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-83. - Structural standards.

(a) *Foundation.* Foundations shall conform to the following:

- (1) Beneath the building there shall be firm ground, which is reasonably dry, properly drained and no water running under the building.
- (2) There shall be sound footings, adequate bearing.
- (3) There shall be sound piers, no loose mortar or masonry.
- (4) There shall be no piers in which the plumbline from the top center falls outside the middle one-third of the pier base.
- (5) There shall be no isolated solid masonry piers exceeding in height ten times the least dimension of the pier.
- (6) There shall be no wood stiff-knee piers.
- (7) There shall be masonry underpinning on all dwelling units with ventilation as required by the state building code.
- (8) All masonry block and brick foundation systems or components shall have mortared or bonded joints.
- (9) Every crawlspace door, doorway, or hatchway shall be maintained to prevent the entrance of rainwater and surface drainage water.
- (10) Screening shall be provided for all crawlspace vents or openings.

(b) *Floors.* Floors shall conform to the following:

- (1) There shall be no decayed, termite-damaged, fire-damaged, broken, overloaded or sagging sills.
- (2) Sills shall be properly supported and reasonably level.
- (3) Joists and beams shall not be overloaded, sagging or broken and shall be structurally sound and not likely to cause structural weakness in the future.
- (4) Maximum spans for floor joist, beams and sills, providing they show signs of being weak or overloaded, shall comply with the requirements of the state building code.
- (5) Flooring shall be weathertight without holes or excessive cracks which permit air to penetrate rooms.
- (6) Flooring shall be reasonably smooth and not decayed, fire damaged or worn through.
- (7) There shall be no loose flooring.
- (8) Floors shall be reasonably level.
- (9) Floor covering or finishing shall be reasonably smooth, weathertight, and not worn through.

- (c) *Exterior walls.* Exterior walls shall conform to the following:
- (1) There shall be no wall in which the plumbline from the top center of studs falls outside the base plate at any point along the wall.
  - (2) Maximum spacing for studding, providing they show signs of being weak or overloaded, shall comply with the requirements of the state building code.
  - (3) Studs shall be structurally sound and not likely to cause structural weakness in the future.
  - (4) There shall be no broken or cracked structural members.
  - (5) All siding shall be weathertight, with no holes or excessive cracks or decayed boards, or siding material which permit air to penetrate rooms.
  - (6) There shall be no loose siding.
  - (7) There shall be no deterioration because of lack of preventive maintenance consisting of painting, waterproofing, and repair.
- (d) *Interior walls.* Interior walls shall conform to the following:
- (1) Interior finish shall be free of holes and excessive cracks which permit air to penetrate rooms and, if painted or papered, shall be free of chips or excessive peeling.
  - (2) There shall be no walls in which the plumbline from the top center of studs falls outside the base plate at any point along the wall.
  - (3) Interior wall finishes and trim shall be free of stains or moisture damage caused by leaks from roofing, or other sources
  - (4) There shall be no loose plaster, loose boards, or other loose wall materials.
  - (5) There shall be no cardboard, newspaper or highly combustible or improper wall finish; all wall materials shall be of the same or similar quality and material.
  - (6) Maximum spacing for studding, providing they show signs of being weak or overloaded, shall comply with the requirements of the state building code.
  - (7) Studs shall be structurally sound and not likely to cause structural weakness in the future.
  - (8) There shall be no broken or cracked studs or other structural members.
- (e) *Ceilings.* Ceilings shall conform to the following:
- (1) There shall be no joists, or beams which are decayed, broken, sagging, or improperly supported at the ends.
  - (2) Maximum spacing for ceiling joists, providing they show signs of sagging and being weak, shall comply with the requirements of the state building code.
  - (3) Maximum spans for ceiling joists, providing they show signs of being weak or overloaded, shall comply with the requirements of the state building code.
  - (4) There shall be no holes or excessive cracks which permit air and dust to penetrate rooms.
  - (5) Interior ceiling finishes and trim shall be free of stains or moisture damage caused by leaks from roofing, or other sources.
  - (6) There shall be no loose plaster, boards, gypsum wallboard, or other ceiling finish.
  - (7) There shall be no cardboard, newspaper, highly combustible or improper ceiling finish; all ceiling materials shall be of the same or similar quality and material.
  - (8) Ceiling joists, and beams shall be structurally sound and not likely to cause structural weakness in the future.
- (f) *Roofs.* Roofs shall conform to the following:

- (1) There shall be no rafters or framing members which are decayed, broken, improperly supported at the ends, or likely to cause structural weakness in the future,
  - (2) No rafters shall be seriously damaged by fire.
  - (3) Rafters shall be properly braced and tied four feet on center maximum.
  - (4) The attic shall be ventilated as required by the state building code.
  - (5) Sheathing shall not be loose and shall be structurally sound and not likely to cause structural weakness in the future.
  - (6) There shall be no loose roof covering, no holes, and no leaks causing damage to the structure or rooms.
  - (7) There shall be a minimum of class C roof covering.
  - (8) There shall be proper flashing at walls or chimneys, and roof penetrations
  - (9) The roof shall be sound, tight, and have no defects that admit water.
  - (10) Roof drainage shall be adequate to prevent dampness or deterioration at the walls or interior of the structure. Roof drains, gutters, downspouts and leaders shall be maintained free of obstructions, and designed to discharge water away from the structure.
- (g) *Porches*. Porches shall conform to the following:
- (1) The floor, ceiling, and roof shall be equal to requirements set forth in this section, except sills, joists, and floors need not be level if providing drainage of floors; floors need not be weathertight; the ceiling height may be seven feet; and the attic need not be vented.
  - (2) Every porch, terrace or entrance platform 30 inches or more above the adjacent finished grade shall be equipped with railings or guards not less than 36 inches high, unless other effective barriers provide adequate safety. Guard opening limitations shall conform to the requirements of the state building code
  - (3) If post and railings are provided, they shall be structurally sound and not likely to cause structural weakness in the future.
- (h) *Stairs and steps*. Stairs and steps shall conform to the following:
- (1) Stairs and steps shall be free of holes, grooves, and cracks large enough to constitute accident hazards.
  - (2) Stairwells and flights of stairs more than four risers high shall have rails not less than two feet six inches measured vertically from the nose of the treads to the top of the rail.
  - (3) Every rail shall be firmly fastened and maintained in good condition.
  - (4) No flight of stairs shall be settled more than one inch out of its intended position or pulled away from supporting or adjacent structures.
  - (5) Supports shall not sag and shall be structurally sound and not likely to cause structural weakness in the future.
  - (6) Every stair riser shall be reasonably uniform in height, and treads shall be reasonably uniform in front to back width, sound and securely fastened in position and strong enough to bear a concentrated load of at least 300 pounds without danger of breaking through.
  - (7) Every exit stairway, deck porch, landing, balcony, exit, and all appurtenances shall be structurally sound with proper anchorage, and capable of supporting imposed loads.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-84. - Property maintenance.

- (a) *Building structure.* The building structure of a place of habitation shall be maintained as follows:
- (1) Exterior wood surfaces not inherently resistant to deterioration shall be treated with a protective coating of paint or other suitable preservative with sufficient frequency to prevent deterioration.
  - (2) Floors, walls, ceilings, and fixtures shall be maintained in a clean and sanitary condition.
- (b) *Open areas.* Open areas shall be maintained as follows:
- (1) Surface and subsurface water shall be appropriately drained to protect buildings and structures and to prevent development of stagnant ponds.
  - (2) Fences and other accessory buildings shall be maintained in safe and substantial condition or demolished.
  - (3) Yards and courts shall be kept clean and free of physical hazards, rubbish, trash, garbage, junked vehicles, vehicle parts and other similar material.
  - (4) There shall be no heavy undergrowth or accumulation of plant growth which is noxious or detrimental to health.
- (c) *Infestation.* Grounds, buildings and structures shall be maintained free of infestation by rodents, insects and other pests.
- (d) *Garbage and rubbish.* There shall be adequate sanitary facilities and methods used for the storage, handling, and disposal of garbage and rubbish.
- (e) Kitchen and bathroom countertops and cabinets shall be covered by nonabsorbent material and maintained so as to easily be kept clean and in sanitary condition.
- (f) All kitchen and bathroom cabinet doors and drawers shall operate as intended.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-85. - Insulation.

Every dwelling, including multiple dwellings, of three stories or less in height, shall have installed in the ceiling or, for a dwelling of more than one story, in the ceiling of the top story, insulation to a minimum-resistance value of R-19. Except as specified in this section, the insulation shall be installed in accordance with the requirements of the state building code.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Secs. 11-86—11-115. - Reserved.

#### ARTICLE IV. - MINIMUM STANDARDS APPLICABLE TO ROOMINGHOUSES

Sec. 11-116. - Applicability.

All of the sections of this chapter and all of the minimum standards and requirements of this chapter shall be applicable to roominghouses and to every person who operates a roominghouse or who occupies or lets to another for occupancy any rooming unit in a roominghouse, except as provided in the following sections of this article.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-117. - Water closet, hand lavatory and bath facilities.

At least one water closet, lavatory basin, and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each four rooming units within a roominghouse whenever such facilities are shared. All such facilities shall be located within the residence building served and shall be directly accessible from a common hall or passageway and shall be not more than one story removed from any of the persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times. Such required facilities shall not be located in a cellar.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-118. - Minimum floor area for sleeping purposes.

Every room in a roominghouse occupied by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each additional occupant 12 years of age and over and at least 35 square feet of floor area for each additional occupant under 12 years of age.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-119. - Sanitary conditions.

The operator of every roominghouse shall be responsible for the sanitary maintenance of all walls, floors and ceilings, and for the sanitary maintenance of every other part of the roominghouse. The operator shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the roominghouse is contained is leased or occupied by the operator.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-120. - Sanitary facilities.

Every water closet, flush urinal, lavatory basin, and bathtub or shower required by section 11-117 shall be located within the roominghouse and within a room which affords privacy and is separate from the habitable rooms, and which is accessible from a common hall and without going outside the roominghouse or through any other room therein.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Secs. 11-121—11-145. - Reserved.

#### ARTICLE V. - MINIMUM STANDARDS APPLICABLE TO LODGING ESTABLISHMENTS

Sec. 11-146. - Applicability.

All of the sections of this chapter and all of the minimum standards and requirements of this chapter shall be applicable to lodging establishments and to every person who operates a lodging establishment or who occupies or lets to another for occupancy any lodging unit, except as provided in the following sections of this article, or as expressly otherwise excluded in this chapter.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-147. - Water closet, hand lavatory and bath facilities.



At least one water closet, lavatory basin, and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each lodging unit. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-148. - Interior space dimensions.

Interior space dimensions shall comply with all applicable requirements of the state building code.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-149. - Sanitary conditions.

The operator of every lodging establishment shall be responsible for the sanitary maintenance of all walls, floors and ceilings, and for the sanitary maintenance of every other part of the lodging establishment. The operator shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the lodging establishment is contained is leased or occupied by the operator.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-150. - Sanitary facilities.

Every water closet, flush urinal, lavatory basin, and bathtub or shower required by section 11-80 shall be located within a room which affords privacy and is separate from the habitable room, and which is accessible from a common hall and without going outside the hotel/motel room.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-151. - Means of egress.

- (a) Means of egress shall comply with all applicable requirements of the state building code.
- (b) Deadbolt locks, if any, on exterior doors shall be operable from the exterior by the use of a key, card, or combination and from the inside by a knob or lever without the use of a key, card, or combination or special knowledge or effort to operate; no person shall install a deadbolt lock on a hotel room or motel room door that does not comply with all applicable laws.
- (c) There shall be conspicuously displayed immediately adjacent to or on the inside of every exit door from a sleeping room, a diagram depicting two evacuation routes.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Sec. 11-152. - Fire resistance.

Walls, floors, ceilings, doors and windows shall comply with all applicable requirements of the state building code if damaged or constructed of highly flammable material.

( [Ord. No. 9651](#), § 1, 10-14-2019)

Chapter 17 - SOIL EROSION AND SEDIMENTATION CONTROL<sup>[1]</sup>

Footnotes:

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**Cross reference**— Buildings and building regulations, ch. 5; floods, ch. 9.

**State Law reference**— Municipal authority to enact and enforce soil erosion and sedimentation control ordinances, G.S. 160A-~~458~~922.

ARTICLE I. - IN GENERAL

Sec. 17-1. - Short title.

The rules and regulations prescribed by this chapter shall be known and may be cited as the "City of Charlotte Soil Erosion and Sedimentation Control Ordinance."

(Code 1985, § 18-21)

Sec. 17-2. - Statement of purpose.

The sedimentation of streams, lakes, wetlands and other waters of this state constitute a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters. Control of erosion and sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose. It is the purpose of this chapter to provide for creation, administration, and enforcement of the program through procedures and for the adoption of mandatory standards that will permit development of the county to continue with the least detrimental effects from pollution by sedimentation. In recognition of the desirability of early coordination of sedimentation control planning, it is the intention of the city council that preconstruction conferences be held among the affected parties.

(Code 1985, § 18-22)

Sec. 17-3. - 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:

*Accelerated erosion* means any increase over the rate of natural erosion as a result of land disturbing activity.

*Act* means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

*Adequate erosion control measures, structures, or devices* means ones that control the soil material within the land area under responsible control of the person conducting the land disturbing activity.

*Affiliate* means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

*Being conducted* means a land disturbing activity has been initiated and permanent stabilization of the site has not been completed.

*Borrow* means fill material that is required for on-site construction and is obtained from other locations.

*Certificate of occupancy* means the document required by the state building code certifying that a new building shall not be occupied or a change made in occupancy, nature or use of a building until after all required building and services systems have been inspected for compliance with the technical codes and other applicable laws and ordinances and released by the code enforcement department.

*City engineer* means the city engineer or the director's duly authorized representatives.

*Code enforcement department* means the city engineering and property management department, land development division.

*Commission* means the state sedimentation control commission.

*Committee* means the Charlotte-Mecklenburg Storm Water Advisory Committee as established by the joint resolution of the city council and the county board of commissioners, together with any amendments thereto.

*Competent person* means a person that has obtained and maintains in good standing an approved certification that is recognized by the city engineer.

*Completion of construction or development* means that no further land disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

*Contractor conducting the land disturbing activity* means any person who participates in the land disturbing activity, including, but not limited to, the general contractor and subcontractors with the responsibility for supervising the work on the tract for the changing of the natural cover or topography of the tract or any part thereof.

*Days* means calendar days unless otherwise specified.

*Department* means the state department of environment and natural resources.

*Director* means the director of the division of land resources of the department of environment and natural resources.

*Discharge point* means that point at which concentrated flow runoff leaves a tract of land.

*Energy dissipater* means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

*Erosion* means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

*Forest practice guidelines* means the written directions related to water quality prepared by the department's division of forest resources and the United States Forest Service, including, but not limited to, the Forestry Best Management Practices Manual prepared by the department.

*Ground cover* means any vegetative growth or other material that renders the soil surface stable against accelerated erosion.

*Lake or watercourse* means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension and which could be damaged by accumulation of sediment.

*Land-disturbing activity* means any use of the land by any person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the ground cover or topography and that may cause or contribute to sedimentation.

*Local government* means any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the act.

*Natural erosion* means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

*Parent* means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

*Performance reservation* means the subjective evaluation that proposed measures may or may not be adequate to meet the design standard.

*Permit* means the permit to conduct land disturbing activities (grading permit) issued by the city engineer after a plan is approved.

*Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

*Person responsible for the violation* means:

- (1) The developer or other person who has or holds himself out as having financial or operational control over the land disturbing activity;
- (2) The landowner or person in possession or control of the land who has directly or indirectly allowed the land disturbing activity or has benefited from it or has failed to comply with any section of this chapter, the act, or any order adopted pursuant to this chapter or the act; and/or
- (3) The contractor with control over the tract or the contractor conducting the land-disturbing activity.

*Phase of grading* means one of two types of grading: rough or fine.

*Plan* means an erosion and sedimentation control plan.

*Sediment* means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

*Sedimentation* means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land disturbing activity or into a wetland, lake or watercourse.

*Storm drainage facilities* means the system of inlets, conduits, channels, ditches and appurtenances that serve to collect and convey stormwater through and from a given drainage area.

*Stormwater runoff* means the direct runoff of water resulting from precipitation in any form.

*Subsidiary* means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

*Ten-year storm* means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

*Tract* means all land and bodies of water being disturbed, developed or to be disturbed or developed as a unit, regardless of ownership.

*Twenty-five-year storm* means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years and of a duration that will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.

*Uncovered* means the removal of ground cover from, on, or above the soil surface.

*Undertaken* means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

*Velocity* means the average velocity of flow through the cross section of the main channel at the peak flow of the design storm. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

*Waste* means surplus materials resulting from on-site construction and disposed of at other locations.

*Watershed* means any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of the county.

*Wetland* means land having the vegetative, soil and hydrologic characteristics to be regulated by section 401 and 404 of the Federal Clean Water Act as defined by the United States Army Corps of Engineers.

*Working days* means days exclusive of Saturday, Sunday and county government holidays during which weather conditions or soil conditions permit land disturbing activity to be undertaken.

(Code 1985, § 18-23; Ord. No. 4051, § 1, 10-27-2008)

**Cross reference**— Definitions generally, § 1-2.

Sec. 17-4. - Scope and exclusions.

- (a) This chapter shall regulate land disturbing activity within the city and unincorporated areas of the county, the city's extraterritorial jurisdiction (ETJ) and sphere.
- (b) This chapter shall not apply to the following land disturbing activities:
  - (1) Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
    - a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
    - b. Dairy animals and dairy products.
    - c. Poultry and poultry products.
    - d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
    - e. Bees and apiary products.
    - f. Fur-producing animals.
  - (2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in forest practice guidelines.
  - (3) Activities for which a permit is required under the Mining Act of 1971, G.S. 74-46 et seq.
  - (4) For the duration of an emergency, activities essential to protect human life.
  - (5) Land disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

(Code 1985, § 18-24; Ord. No. 4051, § 2, 10-27-2008)

Sec. 17-5. - Forest practice guidelines.

- (a) The city council adopts by reference the forest practice guidelines.

- (b) If land disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with forest practice guidelines, this chapter shall apply to such activity and any related land disturbing activity on the tract.

(Code 1985, § 18-25)

Secs. 17-6—17-30. - Reserved.

## ARTICLE II. - EROSION CONTROL REQUIREMENTS

### Sec. 17-31. - General requirements.

- (a) *Erosion and sedimentation control measures.* All land disturbing activities, including those that disturb less than an acre, shall provide adequate erosion control measures, structures, or devices in accordance with this chapter.
- (b) *Plan required.* No person shall initiate, direct, allow or conduct any land disturbing activity on a tract that meets any of the following criteria without having a copy of an approved erosion and sedimentation control plan on the job site or a plan approved by the city engineer with performance reservations on the job site:
- (1) Uncovers one acre or more.
  - (2) In borrow and waste areas covered by section 17-34(f), with a disturbed area greater than one acre.
- (c) *Compliance.* Persons who submit a plan to the city engineer shall comply with sections 17-35 and 17-36 of this chapter.
- (d) *Protection of property.* Persons conducting land disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated sedimentation.
- (e) *Applicability of more restrictive rules.* Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.
- (f) *Conflict of interest.* No staff member shall make a final decision on an administrative decision required by this chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this article unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the city to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the city, as determined by the city. For purposes of this article, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(Code 1985, § 18-26)

### Sec. 17-32. - Basic control objectives.

A plan may be disapproved pursuant to section 17-35 of this chapter if the plan fails to include adequate erosion control measures, structures, or devices to address the following control objectives:

- (1) *Identify critical areas.* On-site areas that are subject to severe erosion and off-site areas that are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention.
- (2) *Limit on time of exposure.* All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- (3) *Limit on exposed areas.* All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- (4) *Control of surface water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (5) *Control of sedimentation.* All land disturbing activity is to be planned and conducted so as to prevent sedimentation damage.
- (6) *Management of stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity at the discharge point so as to minimize accelerated erosion of the site and to decrease sedimentation to any lake or watercourse.

(Code 1985, § 18-27)

Sec. 17-33. - Mandatory standards for land disturbing activity.

No land disturbing activity subject to the control of this chapter shall be undertaken except in accordance with the following mandatory standards:

- (1) *Lake, watercourse and wetland protection.* Additional erosion control measures, structures, or devices as specified in the policies and procedures statement issued by the city engineer shall be required to provide a higher level of protection to lakes, watercourses, and wetlands from sedimentation as specified in the policies and procedures statement issued by the city engineer.
- (2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control measures, structures, or devices. Permanent or temporary stabilization sufficient to restrain erosion is to be provided within 21 calendar days after completion of any phase of grading.
- (3) *Ground cover.* The person conducting the land-disturbing activity shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 21 calendar days following completion of construction or development. For an area of a site that is inactive for a period of 21 calendar days or longer, temporary ground cover is required.
- (4) *Prior plan approval.* No person shall initiate any land-disturbing activity on a tract if one acre or more is to be disturbed unless a plan for that activity has been submitted and approved in accordance with subsection 17-35(b).
- (5) *Pre-construction conference.* If one acre or more is to be uncovered, the person conducting land-disturbing activity or an agent of that person shall contact the city engineer at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the city engineer or duly authorized representative to review and discuss the approved plan and the proposed land-disturbing activity.

- (6) *Monitoring.* The person conducting land-disturbing activity or an agent of that person shall inspect all erosion and sedimentation control measures at least once a week and within 24 hours after any storm event of greater than one-half inch of rain per 24 hour period or more frequently if required by state or federal law. The person performing this monitoring shall have certification approved by the city engineer.
- a. If one acre or more is to be disturbed, a record of inspections shall be kept by the person conducting the land-disturbing activity or an agent until six months after construction is completed and approved by the city engineer. The record shall include the date and time of inspection, weather conditions, any repairs or maintenance needed, and the signature and certification number of the person who performed the inspection. Additional record keeping may be required by state or federal law and as stated on the approved plans. Corrective action on the repairs and maintenance indicated on the record should be initiated within 24 hours after a rain event or within 24 hours of the last inspection if a rain event did not prompt the inspection, unless additional time is allowed by the city engineer. The date of the completion of such repairs shall be noted. The records of inspection shall be made available to the city engineer upon request.
  - b. Persons who have had a notice of violation or repeated warning about off-site sedimentation or nonmaintenance of adequate erosion control measures, structures, or devices may be required to provide the city engineer with a self-inspection record for the particular tract.

(Code 1985, § 18-28; Ord. No. 4051, § 3, 10-27-2008)

Sec. 17-34. - Design and performance standards.

- (a) *Design storm.* Adequate erosion control measures, structures, and devices shall be planned, designed, constructed and maintained so as to provide protection from the calculated maximum peak of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource Conservation Service's (formerly Soil Conservation Service's) National Engineering Field Manual for Conservation Practices, or other acceptable calculation procedures including but not limited to the Charlotte-Mecklenburg Storm Water Design Manual.
- (b) *Innovative measures.* Erosion and sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the city engineer if it can be demonstrated that such techniques and ideas are likely to produce successful results.
- (c) *Responsibility for maintenance.* During the development of a site, the person conducting the land disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any section of this chapter, the act, or any order adopted pursuant to this chapter or the act. After development, the landowner or person in possession or control of the land shall install and maintain all necessary permanent erosion and sediment control measures.
- (d) *Additional measures.* Whenever the city engineer determines that erosion and sedimentation will likely continue, despite installation and maintenance of protective practices, the person conducting the land disturbing activity will be required to take additional protective action.
- (e) *Storm drainage facilities protection.* Persons shall design the plan and conduct land disturbing activity so that the post-construction velocity of the ten-year storm does not exceed the maximum nonerosive velocity tolerated by the soil of the receiving watercourse or the soil of the receiving land.
- (f) *Borrow and waste areas.* When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, the following areas are considered as part of the land-disturbing activity.



- (1) Areas from which borrow is obtained that are not regulated by the provisions of the Mining Act of 1971, G.S. 74-46 et seq.; or
- (2) Waste areas for surplus materials other than landfills regulated by the department's division of solid waste management.

When the person conducting the land-disturbing activity is not the person conducting the borrow or waste disposal activity, the activity shall be considered a separate land-disturbing activity.

The responsible person conducting the borrow or waste areas shall provide adequate erosion control measures, structures, or devices and comply with all provisions of this chapter.

- (g) *Access and haul roads.* Temporary access and haul roads, other than public roads, constructed or used in connection with any land disturbing activity shall be considered a part of such activity.
- (h) *Operations in lakes or watercourses.* Land disturbing activity in connection with construction in, on, over, or under a lake or watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the lake or watercourse. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

(Code 1985, § 18-29; Ord. No. 4051, § 4, 10-27-2008)

Sec. 17-35. - Erosion and sedimentation control plans.

- (a) *Plan requirements.* All plans required for land disturbing activities as identified in section 17-31(b) of this chapter shall meet the following requirements:
  - (1) Plans shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the city engineer on request.
  - (2) Plans must contain an authorized statement of financial responsibility and ownership signed by the person financially responsible for the land disturbing activity or that person's attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of the state, an agent in the state must be designated in the statement for the purpose of receiving service of process and notice of compliance or noncompliance with the plan, the act, this chapter, or rules or orders adopted or issued pursuant to this chapter.
  - (3) If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.
  - (4) The land-disturbing activity described in the plan shall comply with all federal, state, and local water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The city engineer may require supporting documentation.
  - (5) The land-disturbing activity described in the plan shall not result in a violation of rules adopted by the environmental management commission to protect riparian buffers along surface waters.
  - (6) The land-disturbing activity described in the plan shall not result in a violation of any local ordinance, law, rule or regulation, including but not limited to zoning; tree protection; stream, lake and watershed buffers; and flood plain regulations.

- (7) If the plan is submitted for land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1, et seq.), such as required on tracts involving public money or public land, a complete environmental document must be presented for review. The city engineer's time for reviewing the plan will not commence until a complete environmental document is available for review.
- (8) Copies of the plan shall be filed with the city engineer. A copy of the approved plan shall be maintained on the job site.
- (9) Effort should be made not to uncover more than 20 acres at any one time. If more than 20 acres are to be uncovered at any one time, the plan shall contain the following:
  - a. The method of limiting the time of exposure and amount of exposed area to achieve the objectives of this chapter.
  - b. A cut/fill analysis that shows where soil will be moved from one area of the tract to another as ground elevation is changed.
  - c. Construction sequence and construction phasing to justify the time and amount of exposure.
  - d. Techniques to be used to prevent sedimentation associated with larger disturbed areas.
  - e. Additional erosion control measures, structures, and devices to prevent sedimentation.
- (b) *Plan review process.* The city engineer will review each complete plan submitted and within 30 days of receipt thereof will notify the person submitting the plan, referred to as "the applicant," that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Should the plan be filed and not reviewed within the specified timeframe, the land disturbing activity may commence subject to section 17-33(5) and subsection (a)(5) of this section, and the city engineer will endeavor to review the plan on an expedited schedule. If the plan is disapproved, the city engineer shall notify the applicant and, if required, the director of such disapproval within ten days thereof. The city engineer shall advise the applicant and the director in writing as to the specific reasons that the plan was disapproved. The applicant shall have the right to appeal the city engineer's decision as provided in section 17-70 of this chapter. Plans for which land disturbing activity has not commenced within three years from the initial plan approval are void.
- (c) *Amendments to plans.* If the city engineer, either upon review of such plan or upon inspection of the job site, determines that the plan is inadequate to meet the requirements of this chapter or that a significant risk of accelerated erosion or off-site sedimentation exists, the city engineer may require a revised plan. Pending the preparation of the revised plan, work on the affected area may cease or may continue only under conditions outlined by the city engineer. Amendments or revisions to a plan must be made in written and/or graphic form and may be submitted at any time under the same requirements for submission of original plans. Until such time as the city engineer approves any amendments or revisions, the land disturbing activity shall not proceed, except in accordance with the plan as originally approved. The city engineer must approve, approve with modifications, approve with performance reservations, or deny a revised plan within 30 days of receipt, or it is deemed to be approved as submitted, unless such approval conflicts with other federal, state or local regulations.
- (d) *Grounds for disapproval of plans.* Any plan that is not in accordance with the requirements set forth in subsection (a) of this section shall be disapproved. In addition, a plan may be disapproved upon a finding that the financially responsible person or any parent or subsidiary thereof:
  - (1) Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation or is not in compliance with the provisions of the notice;
  - (2) Has failed to pay a civil penalty assessed pursuant to the act, or a local ordinance adopted pursuant to the act, by the time the payment is due;
  - (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the act; or

- (4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the act.
- (e) *Violations.* Any person engaged in land disturbing activity who fails to file a required plan in accordance with this chapter shall be deemed in willful violation of this chapter. Any person who conducts a land disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter and shall, upon conviction, be punished in accordance with section 2-21.

(Code 1985, § 18-30; Ord. No. 4051, § 5, 10-27-2008)

#### Sec. 17-36. - Permits.

(a) No person shall undertake any land disturbing activity subject to this chapter without first obtaining a permit from the city engineer. The only exception to this requirement is a land disturbing activity that:

- (1) Has been preapproved by the city engineer at a preconstruction conference;
- (2) Is for the purpose of fighting fires;
- (3) Is for the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures are utilized to protect against off-site damage; or
- (4) Does not exceed one acre of disturbed area. In determining the size of the disturbed area, lands being developed as a unit will be aggregated regardless of ownership. Although a plan and a permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this chapter.

(b) The permit obtained pursuant to subsection (a) shall expire one year after issuance unless work authorized by the permit has substantially commenced.

(Code 1985, § 18-31)

Secs. 17-37—17-65. - Reserved.

#### ARTICLE III. - ADMINISTRATION, ENFORCEMENT AND APPEALS<sup>[2]</sup>

Footnotes:

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**Cross reference**— Administration, ch. 2.

#### Sec. 17-66. - Inspections and investigations.

- (a) The city engineer is authorized, upon presentation of proper credentials, or inspection warrant if necessary, to inspect the sites of land disturbing activity at all reasonable hours to determine compliance with the act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the activity is being conducted in accordance with this chapter and the approved plan and whether the measures required in the plan are effective in controlling erosion and

sediment resulting from land disturbing activity. Notice of the right to inspect shall be included in the notification of each plan approval or issuance of the permit.

- (b) No person shall willfully resist, delay, or obstruct the city engineer while the city engineer is inspecting or attempting to inspect a land disturbing activity under this chapter.
- (c) If, through inspection, it is determined that a person engaged in land disturbing activity has failed to comply with the act, this chapter, or rules or orders adopted or issued pursuant to this chapter, or has failed to comply with an approved plan, the city engineer will serve upon the landowner, the landowner's agent, or other person in possession or control of the land a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, rule 4, or other means reasonably calculated to give actual notice. Notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. A notice of violation shall identify the nature of the violation and set forth the measures necessary to achieve compliance with this chapter. The notice shall, if required, specify a date by which the person must comply with this chapter and shall advise that the person is subject to civil penalty or that failure to correct the violation within the time specified will subject that person to the civil penalties, including those provided in section 17-67 of this chapter or any other authorized enforcement action. The notice of violation need not be given for those violations identified in subsection (f) of this section.
- (d) In determining the measures required and the time for achieving compliance, the city engineer shall take into consideration the technology and quantity of work required and shall set reasonable and attainable time limits.
- (e) The city engineer shall use local rainfall data approved by the city engineer to determine whether the design storm identified in section 17-34(a) has been exceeded.
- (f) Penalties may be assessed concurrently with a notice of violation for any of the following:
  - (1) Failure to submit a plan.
  - (2) Performing land disturbing activities without an approved plan and preconstruction conference, or permit.
  - (3) Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
  - (4) A repeated violation for which a notice was previously given on the same tract or to the person responsible for the violation.
  - (5) Willful violation of this chapter.
  - (6) Failure to install or maintain adequate erosion control measures, structures, or devices per the approved plan and additional measures per section 17-34(d) such that it results in sedimentation in a wetland, lake or watercourse, or other designated protected areas.
  - (7) Failure to install or maintain adequate erosion control measures, structures, or devices per the approved plan and additional measures per section 17-34(d) such that it results in off-site sedimentation.
- (g) The city engineer shall have the power to conduct such investigation as he may reasonably deem necessary to carry out his duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land disturbing activity. No person shall refuse entry or access to the city engineer who requests entry for purpose of inspection or investigation and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with the city engineer while in the process of carrying out official duties.
- (h) The city engineer shall also have the power to require written statements or the filing of reports under oath as a part of investigating land disturbing activity.
- (i) With regard to the development of any tract that is subject to this chapter, the code enforcement department shall not issue a certificate of occupancy where any of the following conditions exist:

- (1) There is a violation of this chapter with respect to the tract.
- (2) If there remains due and payable to the city civil penalties that have been levied against the person conducting the land disturbing activity for violations of this chapter. If a penalty is under appeal, the city engineer may require that the amount of the fine, and any other amount that the person would be required to pay under this chapter if the person loses the appeal, be placed in a refundable account or surety prior to issuing the certificate of occupancy.
- (3) The requirements of the plan have not been completed and the building for which a certificate of occupancy is requested is the only building then under construction on the tract.
- (4) On the tract which includes multiple buildings on a single parcel, the requirements of the plan have not been completed and the building for which a certificate of occupancy is requested is the last building then under construction on the tract.
- (5) On a tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the plan have not been completed with respect to the parcel for which the certificate of occupancy is requested.

(Code 1985, § 18-32; Ord. No. 4051, §§ 6, 7, 10-27-2008)

Sec. 17-67. - Penalties.

- (a) Any person who violates any of the sections of this chapter, or rules or orders adopted or issued pursuant to this chapter, or who initiates or continues a land disturbing activity for which a plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation except as provided in section 17-66(f) of this chapter. Refusal to accept the notice or failure to notify the city engineer of a change of address shall not relieve the violator's obligation to comply with this chapter or to pay such a penalty.
- (b) The maximum civil penalty for each violation of this chapter is \$5,000.00. Each day of continuing violation shall constitute a separate violation.
- (c) The amount of the civil penalty shall be assessed pursuant to the following:
  - (1) *Violations involving conducting a land disturbing activity without an approved plan.* Any person engaged in a land disturbing activity without a required approved plan and preconstruction conference or permit in accordance with this chapter or who initiates, directs or allows a land disturbing activity without a required, approved plan and preconstruction conference or permit shall be subject to a civil penalty of \$5,000.00 per day, per violation. The penalty may be decreased based on mitigating circumstances.
  - (2) *Violations resulting in sediment entering a wetland, lake or watercourse.* Violations resulting in sediment entering a wetland, lake or watercourse subjects the violator to a civil penalty of \$3,000.00 per day, per violation. The penalty may be increased up to \$5,000.00 per day or decreased.
  - (3) *Violations resulting in off-site sedimentation.* Violations of this chapter that result in off-site sedimentation subject the violator to a civil penalty of \$1,000.00 per day, per violation. The penalty may be increased up to \$5,000.00 per day or decreased. Violations of this type may include, but are not limited to, the following:
    - a. Conducting land disturbing activities beyond the limits of an existing permit without approval of an amended plan and permit that results in off-site sedimentation.
    - b. Failure to properly install or maintain erosion control measures in accordance with the approved plan or the Charlotte Land Development Standards Manual that results in off-site sedimentation.

- c. Failure to retain sediment from leaving a land disturbing activity as required by this chapter.
  - d. Failure to restore off-site areas affected by sedimentation during the time limitation established in a notice of violation and as prescribed in the policies and procedures statement.
  - e. Any other violation of this chapter that results in off-site sedimentation.
- (4) *Violations of chapter not resulting in off-site sedimentation.* Violations of this chapter that do not result in off-site sedimentation subject the violator to a civil penalty of \$500.00 per day, per violation. The penalty may be increased up to \$5,000.00 per day or decreased. Violations of this type may include, but are not limited to, the following:
- a. Failure to comply with the mandatory standards for land-disturbing activity as specified in section 17-33, except subsections 17-33(d) and 17-33(e).
  - b. Failure to submit to the city engineer for approval an acceptable revised erosion and sedimentation control plan after being notified by the city engineer of the need to do so.
  - c. Failure to maintain adequate erosion control measures, structures, or devices to confine sediment.
  - d. Failure to follow the provisions on the approved plan.
  - e. Any other action or inaction that constitutes a violation of this chapter that did not result in off-site sedimentation.
- (d) In determining the amount of the civil penalty, the city engineer shall consider any relevant mitigating and aggravating factors, including, but not limited to:
- (1) The effect, if any, of the violation;
  - (2) The degree and extent of harm caused by the violation;
  - (3) The cost of rectifying the damage;
  - (4) Whether the violator saved money through noncompliance;
  - (5) Whether the violator took reasonable measures to comply with this chapter;
  - (6) Whether the violation was committed willfully;
  - (7) Whether the violator reported the violation to the city engineer; and
  - (8) The prior record of the violator in complying or failing to comply with this chapter or any other erosion and sedimentation control ordinance or law.

The city engineer is authorized to vary the amount of the per-diem penalty set out in subsection (c) of this section to take into account any relevant mitigating factors.

- (e) Repeat violators may be charged by a multiple of the base penalty determined in subsection (c). The penalty for a repeat violator may be doubled for each previous time the person responsible for the violation was notified of a violation of this chapter or any other soil erosion and sediment control ordinance or the act. In no case may the penalty exceed the maximum allowed by subsection (b).
- (f) The city engineer shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, rule 4, and shall direct the violator to either pay the assessment or contest the assessment as specified in section 17-70. Notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. If a violator does not pay a civil penalty assessed by the city engineer within 30 days after it is due, or does not request a hearing as provided in section 17-70, the city engineer shall request the city attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in the county superior court or in any other court of competent jurisdiction.

- (g) A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (h) Civil penalties collected pursuant to this chapter shall be credited to the city's general fund as nontax revenue.
- (i) Any person who knowingly or willfully violates any section of this chapter or who knowingly or willfully initiates or continues a land disturbing activity for which a plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a class 2 misdemeanor and may be subject to a fine not to exceed \$5,000.00. This is in addition to any civil penalties that may be charged. Each day of continuing violation shall constitute a separate violation.
- (j) A violation of this chapter that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under G.S. 14-4, but instead shall be subject to the civil penalties provided in this section.

(Code 1985, § 18-33; Ord. No. 4051, §§ 8—10, 10-27-2008)

Sec. 17-68. - Injunctive relief.

- (a) Whenever the city engineer has reasonable cause to believe that any person is violating or threatening to violate this chapter or any term, condition, or provision of an approved plan, the city engineer may, either before or after the institution of any other action or proceeding authorized by this chapter, authorize the city attorney to institute a civil action in the name of city for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to G.S. 153A-123 in the county superior court.
- (b) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this chapter.

(Code 1985, § 18-34)

Sec. 17-69. - Restoration of areas affected by failure to comply.

The city engineer may require a person who engaged in any land disturbing activity and failed to retain sediment generated by the activity to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this chapter.

(Code 1985, § 18-35)

Sec. 17-70. - Appeals.

- (a) *Generally.* The stormwater advisory committee (SWAC or committee), as established by the city, as shall hear and decide appeals from the requirements of this chapter.

(1) *Conflict of Interest.* Members of SWAC shall not participate in or vote on any matter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member or if the applicant or other person subject to that decision is a person with whom the SWAC member has a close familial, business, or other associational relationship. In exercising quasi-judicial functions, members of SWAC shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons'



constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

a. Resolution of Objection. If an objection is raised to a SWAC member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of SWAC shall by majority vote rule on the objection.

b. Familial Relationship. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(2) Oath of Office. Any member of SWAC must take an oath-of-office before commencing any duties of the committee.

(3) Meeting Minutes. Minutes of the meeting proceedings must be taken and kept pursuant to the North Carolina Retention Schedule.

(4) Rules of Procedure. A copy of the Rules of Procedure adopted by SWAC shall be maintained by the clerk or other designated official and posted on the City of Charlotte website.

(b) *Disapproval or modification of proposed plan.* Procedures for an appeal of the disapproval or modification of the proposed plan are as follows:

(1) The disapproval or modification of any proposed plan by the city engineer shall entitle the person submitting the plan (petitioner) to a public hearing before the committee if such person submits written demand for a hearing to the clerk of the committee (clerk) within 30 days after receipt of written notice of the disapproval or modification. Notice of the disapproval or modification sent by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. The demand for a hearing filed with the clerk shall be accompanied by a filing fee as established by the committee. The committee may order the refund of all or any part of the filing fee if it rules in favor of the petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this chapter, and the committee shall have no jurisdiction to hear the appeal.

(2) Within five days of receiving the demand for a hearing, the clerk shall notify the chairman of the committee of the demand for a hearing. As soon as possible after the receipt of the notice, the chairman shall set a time and place for the hearing and notify the petitioner by mail of the date, time and place of the hearing. As per G.S. § 160D-406, notices of hearings shall be mailed to (1) the person or entity whose appeal, application or request is the subject of the hearing; (2) to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and (3) to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the committee from the submission of the notice, as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the committee in accordance with subsection (c) of this section.

(3) If the committee upholds the disapproval or modification of a proposed plan following the public hearing, the petitioner shall have 30 days from the receipt of the decision to appeal the decision to the state sedimentation control commission pursuant to title 15, chapter 4B, section .0018(b) of the North Carolina Administrative Code and G.S. 113A-61(c). Notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(c) *Issuance of notice of violation with assessment of civil penalty.* Procedures for an appeal of the issuance of a notice of violation with an assessment of a civil penalty are as follows:

(1) The issuance of a notice of violation with an assessment of a civil penalty by the city engineer shall entitle the person responsible for the violation of this chapter (petitioner) to a public hearing



before the committee if such person submits written demand for a hearing to the clerk of the committee (clerk) within 30 days of the receipt of the notice of violation, assessment of a civil penalty or order of restoration. Notice of violation given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. The demand for a hearing filed with the clerk shall be accompanied by a filing fee as established by the committee. The committee may order the refund of all or any part of the filing fee if it rules in favor of the petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this chapter, and the committee shall have no jurisdiction to hear the appeal.

- (2) Within five days of receiving the petitioner's demand for a hearing, the clerk shall notify the chairman of the committee of the request for a hearing. As soon as possible after the receipt of the notice, the chairman shall set a time and place for the hearing and notify the petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the committee from the submission of the notice, as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to subsection (c) of this section.
- (3) Any party aggrieved by the decision of the committee with regard to the issuance of a notice of violation, assessment of civil penalties or order of restoration shall have 30 days from the receipt of the decision of the committee to file a petition for review in the nature of certiorari in Mecklenburg County Superior Court.
- (d) *Hearing procedure.* In determining appeals of administrative decisions, SWAC shall conduct an evidentiary hearing and follow the statutory procedures for all quasi-judicial decisions as required by G.S. Sec. 160D-406. The following shall be applicable to any hearing conducted by the committee pursuant to subsection (a) or (b) of this section:
  - (1) At the hearing, all parties with standing, including the petitioner and the city engineer, shall have the right to be present and to be heard, to be represented by counsel, and shall be allowed to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments to present evidence through witnesses and competent testimony relevant to the issue before the committee. For appeals of administrative decisions, the administrator or staff person who made the decision (or his or her successor, if the person is no longer employed) shall be present at the hearing to appear as a witness.
  - (2) Rules of evidence shall not apply to a hearing conducted pursuant to this chapter, and the committee may give probative effect to competent, substantial and material evidence.
  - (3) At least seven days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. The parties shall submit a copy of this information to the clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the committee.
  - (4) Witnesses shall testify under oath or affirmation to be administered by the court reporter or another duly authorized official.
  - (5) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. ~~Both the representative for the city and for the petitioner shall have the right to cross examine witnesses.~~
  - (6) At the conclusion of the hearing, the committee shall render its decision on the evidence submitted at such hearing and not otherwise.
    - a. If, after considering the evidence presented at the hearing, the committee concludes by a preponderance of the evidence that the grounds for the city engineer's actions, including the amount assessed as a civil penalty, with regard to either disapproving or modifying a

proposed plan, issuing a notice of violation, assessing a civil penalty or ordering restoration are true and substantiated, the committee shall uphold the action on the part of the city engineer.

- b. If, after considering the evidence presented at the hearing, the committee concludes by a preponderance of the evidence that the grounds for the city engineer's actions, including the amount assessed as a civil penalty, are not true and substantiated, the committee shall, as it sees fit, either reverse or modify any order, requirement, decision or determination of the city engineer. The committee bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of the city engineer. If the committee finds that the violation has occurred, but that in setting the amount of a penalty the city engineer has not considered or given appropriate weight to either mitigating or aggravating factors, the committee shall either decrease or increase the per-day civil penalty within the range allowed by this chapter. Any decision of the committee which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which mitigating or aggravating factors exist and the appropriate weight that should have been given to such factors by the city engineer in setting the amount of the civil penalty levied against the petitioner.

c. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.

- (7) The committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the committee shall be based on findings of fact and conclusions of law to support its decision.
- (8) The committee's decision shall be reduced to writing and reflect the committee's determination of contested facts and their application to the applicable standards. The committee shall send a copy of its findings and decision to the applicant/petitioner and the city engineer. The decision of the committee shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the city engineer, applicant/petitioner, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.
- (9) The decision of the committee shall constitute a final decision. Any party aggrieved by a final decision of the committee may seek judicial review in the nature of certiorari instituted in the Superior Court of Mecklenburg County. Any petition for a review of the committee's decision must be filed with the clerk of superior court by the later of: (1) 30 days after the decision is effective, or (2) 30 days after a written copy of the decision is provided to the petitioning party. If the notice of the decision is sent by mail, three days shall be added to the time to file the petition.

(Code 1985, § 18-36)

Sec. 17-71. - Revisions.

The city shall incorporate revisions required by the state sedimentation control commission within eight months following receipt of the required revisions.

(Code 1985, § 18-39)

DIVISION 1. - GENERAL PROVISIONS

Sec. 18-101. - Title.

This article shall be officially known as the "Post-Construction Stormwater Ordinance." It is referred to herein as "this ordinance," "these regulations," [or "this article."]

(Ord. No. 3764, § 1(101), 11-26-2007)

Sec. 18-102. - Authority.

The City of Charlotte and City of Charlotte Extra Jurisdictional Territory, referred to herein as "city," is authorized to adopt this article pursuant to state law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; G.S. 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2006-246 (Senate Bill 1566), G.S. 160A-174, 160A-185, ~~160A-372 and 160A-459~~ 160D-804; 804.1 and 160D-925.

(Ord. No. 3764, § 1(102), 11-26-2007)

Sec. 18-103. - Findings.

It is hereby determined that:

- (1) Development and redevelopment alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, non-point source pollution, and sediment transport and deposition, as well as reduce groundwater recharge;
- (2) These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology which are harmful to public health and safety as well as to the natural environment; and
- (3) These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development and redevelopment.

Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal phase II stormwater rules promulgated under it, as well as rules of the state environmental management commission promulgated in response to federal phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt the minimum stormwater controls such as those included in this article.

Therefore, these water quality and quantity regulations are adopted to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

(Ord. No. 3764, § 1(103), 11-26-2007)

Sec. 18-104. - Purpose.

- (a) *General.* The purpose of this article is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-construction stormwater runoff and non-point source pollution associated with development and redevelopment. It has been determined that proper management of construction-related and post-construction stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, and general welfare, and protect water and aquatic resources.
- (b) *Specific.* This article seeks to meet its general purpose through the following specific objectives and means:

- (1) Establishing decision-making processes for development and redevelopment that protect the integrity of watersheds and preserve the health of water resources;
- (2) Minimizing changes to the pre-development hydrologic response for development and redevelopment in their post-construction state in accordance with the requirements of this article for the applicable design storm in order to reduce flooding, streambank erosion, and non-point and point source pollution, as well as to maintain the integrity of stream channels, aquatic habitats and healthy stream temperatures;
- (3) Establishing minimum post-construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- (4) Establishing design and review criteria for the construction, function, and use of structural stormwater control facilities that may be used to meet the minimum post-construction stormwater management standards;
- (5) Establishing criteria for the use of better management and site design practices, such as the preservation of greenspace and other conservation areas;
- (6) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater best management practices (BMPs) to ensure that they continue to function as designed, are maintained appropriately, and pose minimum risk to public safety; and
- (7) Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.

(Ord. No. 3764, § 1(104), 11-26-2007)

Sec. 18-105. - Applicability and jurisdiction.

- (a) *General.* The requirements of this article shall apply to all development and redevelopment within the corporate limits of this city and its extraterritorial jurisdiction, unless one of the following exemptions applies as of July 1, 2008:
- (1) Residential development and redevelopment, preliminary subdivision plan application or in the case of minor subdivisions, construction plan for required improvements, submitted and accepted for review;
  - (2) For nonresidential development and redevelopment, preliminary subdivision plan application submitted and accepted for review, provided that subdivision-wide water quality and quantity features required at the time of submittal are contained within the submittal and provided the plan is subsequently approved and all necessary easements are properly established;
  - (3) Zoning use application submitted and accepted for review for uses that do not require a building permit;
  - (4) Certificate of building code compliance issued by the proper governmental authority;
  - (5) Valid building permit issued pursuant to G.S. ~~153A-344~~160D-604 or G.S. ~~160A-385(b)(i)~~160D-102; 108(d); 603, so long as the permit remains valid, unexpired, and unrevoked;
  - (6) Common law vested right established (e.g., the substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid governmental approval to proceed with a project); and/or
  - (7) A conditional zoning district (including those districts which previously were described variously as conditional district, conditional use district, parallel conditional district and parallel conditional use district) approved prior to the effective date of this article/ordinance, provided formal plan submission has been made and accepted for review either prior to five years from July 1, 2008 in the case of conditional zoning districts approved on or after November 15, 1999, or prior to two

years from July 1, 2008 in the case of conditional zoning districts approved prior to November 15, 1999, and provided such plans encompass either a minimum of 22.5 percent of the area of the project, or any phase of a project so long as such phase is part of a project that includes project-wide water quality requirements to achieve 85 percent TSS removal from developed areas. If no such formal plan submission occurs within the above-described five- or two-year time frames, the requirements of this article shall be applied to the project, except for total phosphorus removal, natural area and buffer requirements not in effect at the time of the approval of the conditional zoning district, all of which do not apply. Any changes to a conditional zoning district necessary to comply with the requirements of this article shall be made through administrative amendment and not through a rezoning.

- (b) *Exemptions.* The requirements of this article shall not apply within the corporate limits or in the extraterritorial jurisdiction with respect to the following types of development or redevelopment activities:
- (1) Residential development and redevelopment that cumulatively disturbs less than one acre and cumulatively creates less than 24 percent built upon area based on lot size or the lot is less than 20,000 square feet (lot must have been described by metes and bounds in a recorded deed prior to July 1, 2008 and can not be part of a larger development or redevelopment);
  - (2) Commercial and industrial development and redevelopment that cumulatively disturbs less than one acre and cumulatively creates less than 20,000 square feet of built upon area (built upon area includes gravel and other partially impervious materials);
  - (3) Redevelopment that disturbs less than 20,000 square feet, does not decrease existing stormwater controls and renovation and/or construction costs (excluding trade fixtures) do not exceed 100 percent of the tax value of the property; and
  - (4) Activities exempt from permit requirements of section 404 of the federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities).
- (c) *No development or redevelopment until compliance and permit.* No development or redevelopment shall occur except in compliance with the provisions of this article or unless exempted. No development or redevelopment for which a stormwater management permit, here after referred to as permit, is required pursuant to this article shall occur except in compliance with the provisions, conditions, and limitations of said permit.
- (d) *Map.* The provisions of this article shall apply within the areas designated on the map titled "Post-Construction Ordinance Map of the City" (hereafter referred to as the "post-construction ordinance map"), which is adopted simultaneously herewith. The post-construction ordinance map and all explanatory matter contained thereon accompany and are hereby made a part of this article. The post-construction ordinance map shall be kept on file by the stormwater administrator or designee (hereinafter referred to as the "stormwater administrator") and shall be updated to take into account changes in the land area covered by this article and the geographic location of all structural BMPs permitted under this article. In the event of a dispute, the applicability of this article to a particular area of land or BMP shall be determined by appeal through the stormwater administrator

(Ord. No. 3764, § 1(105), 11-26-2007)

Sec. 18-106. - Design manual.

- (a) *Reference to design manual.* The stormwater administrator shall use the policy, criteria, and information, including technical specifications and standards, in the design manual as the basis for decisions about stormwater management permits and about the design, implementation and performance of structural and non-structural stormwater BMPs.

The design manual includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Stormwater treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the

minimum water quality performance standards of this article and the phase II laws. Failure to construct stormwater treatment practices in accordance with these criteria may subject the violator to a civil penalty as described in division 7.

- (b) *Relationship of design manual to other laws and regulations.* If the specifications or guidelines of the design manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the design manual.
- (c) *Changes to standards and specifications.* Standards, specifications, guidelines, policies, criteria, or other information in the design manual in affect at the time of acceptance of a complete application shall control and shall be utilized in reviewing the application and in implementing this article with regard to the application.
- (d) *Amendments to design manual.* The design manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.

Prior to amending or updating the design manual, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

(Ord. No. 3764, § 1(107), 11-26-2007)

Sec. 18-107. - Relationship to other laws, regulations and private agreements.

- (a) *Conflict of laws.* This article is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.
- (b) *Private agreements.* This article is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this article are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this article shall govern. Nothing in this article shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this article. In no case shall the city be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

(Ord. No. 3764, § 1(108), 11-26-2007)

Sec. 18-108. - Severability.

If the provisions of any section, subsection, paragraph, subdivision or clause of this article shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this article.

(Ord. No. 3764, § 1(109), 11-26-2007)

Sec. 18-109. - Effective date and transitional provisions.

- (a) *Effective date.* This article shall take effect on July 1, 2008.
- (b) *Violations continue.* Any violation of the provisions of this article existing as of July 1, 2008 shall continue to be a violation under this article and be subject to penalties and enforcement unless the use, development, construction, or other activity complies with the provisions of this article.

(Ord. No. 3764, § 1(110), 11-26-2007)

Sec. 18-110. - Definitions.

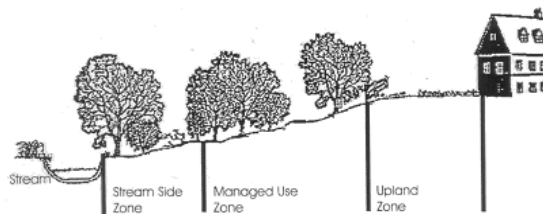
When used in this article, the following words and terms shall have the meaning set forth in this section, unless other provisions of this article specifically indicate otherwise.

*Administrative manual* means a manual developed by the stormwater administrator and distributed to the public to provide information for the effective administration of this article, including but not limited to application requirements, submission schedule, fee schedule, maintenance agreements, criteria for mitigation approval, criteria for recordation of documents, inspection report forms, requirements for submittal of bonds, a copy of this article, and where to obtain the design manual.

*Best management practices (BMPs)* means a structural management facility used singularly or in combination for stormwater quality and quantity treatment to achieve water quality protection goals.

*Buffer* means a natural or vegetated area through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants.

*Buffer zones.* In the Central and Western Catawba Districts, streams draining greater than or equal to 50 acres but less than 300 acres have a two-zone buffer including a stream side and upland zone. Buffers for streams draining greater than or equal to 300 acres have three zones as shown below. The amount of disturbance allowed in the buffer differs in each zone. In the Yadkin-Southeast Catawba there are no zones, the entire buffer is undisturbed.



*Buffer widths.* Viewed aerially, the stream buffer width is measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream.

*Built-upon area (BUA)* means that portion of a property that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts (activity fields that have been designed to enhance displacement of runoff, such as compaction and grading or installation of sodded turf, and underground drainage systems for public parks and schools will be considered built-upon area.) "Built-upon area" does not include a wooden slatted deck or the water area of a swimming pool.

*Charlotte BMP manual* means the manual of design criteria, construction standards, and details for stormwater management facilities prepared by the stormwater administrator, as periodically amended, which regulates and controls the provisions and construction of best management practices relating to post construction stormwater controls. Whenever reference is made to "standards," "design manual," or "manual," it refers to the latest published edition of this document.

*Commercial development or redevelopment* means any land disturbing activity that is not residential development or redevelopment as defined herein.

*Development* means land-disturbing activity that creates built upon area or that otherwise decreases the infiltration of precipitation into the soil.

*Disturbance* means any use of the land by any person or entity which results in a change in the natural cover or topography of the land.

*Drainage area* means That area of land that drains to a common point on a project site.



*Floodplain* means the low, periodically-flooded lands adjacent to streams. For land use planning purposes, the regulatory floodplain is usually viewed as all lands that would be inundated by the regulatory flood.

*Grass field* means land on which grasses and other herbaceous plants dominate and trees over six feet in height are sparse or so widely scattered that less than five percent of the land area is covered by a tree canopy.

*Industrial uses* means land used for industrial purposes only. Commercial (or other non-industrial) businesses operating on industrially-zoned property shall not be considered an industrial use.

*Larger common plan of development or sale* means any contiguous area where multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to public notice or hearing, drawing, permit application, zoning request, or site design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

*Low impact development (LID)* means the integration of site ecology and environmental goals and requirements into all phases of urban planning and design from the individual residential lot level to the entire watershed.

*Mitigation* means actions taken either on-site or off-site as allowed by this article to offset the impacts of a certain action.

*Multifamily* means a group of two or more attached, duplex, triplex, quadruplex, or multi-family buildings, or a single building of more than 12 units constructed on the same lot or parcel of land under single ownership, and planned and developed with a unified design of buildings and coordinated common open space and service areas in accordance with the requirements of chapter 9 of the zoning ordinance for the zoning district in which it is located.

*Natural area* means land that consists of natural areas containing trees and other natural shrubs consisting of either undisturbed areas or disturbed areas that have been replanted in accordance with the criteria established in this article.

*Non-point source (NPS) pollution* means forms of pollution caused by sediment, nutrients, organic and toxic substances originating from land use activities and carried to lakes and streams by surface runoff.

*Owner* means the legal or beneficial owner of land, including but not limited to a fee owner, mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

*Person(s)* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

*Redevelopment* means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.

*Residential development* means a land disturbing activity containing dwelling units with open yards on at least two sides where land is sold with each dwelling unit.

*Stormwater administrator* means the city engineer or designee that administers and enforces this article.

*Stormwater advisory committee (SWAC)* means the Charlotte-Mecklenburg Stormwater Advisory Committee as established by joint resolutions of the city council, Mecklenburg County Board of



Commissioners and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville, together with any amendments thereto.

*Stormwater management permit* means the development or redevelopment plan, as approved by the stormwater administrator, that details how stormwater runoff will be controlled through structural and/or nonstructural management features.

*Top of bank* means the landward edge of the stream channel during high water or bankfull conditions at the point where the water begins to overflow onto the floodplain.

*Topsoil* means natural, fertile soil capable of sustaining vigorous plant growth that is of uniform composition throughout with an admixture of subsoil, has an acidity range of pH 5.5—7.0.

*Total phosphorus (TP)* means a nutrient that is essential to the growth of organisms but when it occurs in high enough concentrations it can negatively impact water quality conditions. Total phosphorus includes both dissolved and suspended forms of reactive phosphorus, acid hydrolyzable phosphorus and organic phosphorus as measured by Standard Method 4500-P.

*Total suspended solids (TSS)* means total suspended matter in water which includes particles collected on a filter with a pore size of two microns as measured by Standard Method 2540-D, which is commonly expressed as a concentration in terms of milligrams per liter (mg/l) or parts per million (ppm).

(Ord. No. 3764, § 8, 11-26-2007)

Secs. 18-111—18-120. - Reserved.

## DIVISION 2. - ADMINISTRATION AND PROCEDURES

Sec. 18-121. - Review and decision making entities.

### (a) *Stormwater administrator.*

- (1) *Designation.* The city engineer has been designated as the stormwater administrator and he, or his designee, is authorized to administer and enforce these regulations.
- (2) *Powers and duties.* In addition to the powers and duties that may be conferred by other provisions of this Code and other laws, the stormwater administrator shall have the following powers and duties under this article:
  - a. To review and approve or disapprove applications submitted pursuant to this article.
  - b. To make determinations and render interpretations of this article.
  - c. To establish application requirements and schedules for submittal and review of applications and appeals.
  - d. To enforce this article in accordance with its enforcement provisions.
  - e. To maintain records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this article.
  - f. To provide expertise and technical assistance upon request to the city council and the stormwater advisory committee (SWAC).
  - g. To designate appropriate other person(s) who shall carry out the powers and duties of the stormwater administrator.
  - h. To provide information and recommendations relative to variances and information as requested by SWAC in response to appeals.

- i. Prepare and make available to the public an administrative manual that includes: the stormwater management permit application; submittal checklist; fee schedule; maintenance agreements; and a reference to the design manual.
  - j. To take any other action necessary to administer the provisions of this article.
- (b) ~~Powers and duties of the Sstormwater advisory committee. The stormwater advisory committee, hereinafter referred to as SWAC, shall have the following powers and duties:~~
  - (1) The stormwater advisory committee, hereinafter referred to as SWAC, shall have the following powers and duties:
    - a. Administrative review. To hear and decide appeals according to the procedures set forth in this section, where it is alleged there is an error in any order, decision, determination, or interpretation made by the stormwater administrator in the enforcement of this article, including assessments of remedies and/or penalties.
    - b. Variances. To grant variances in specific cases from the terms of this article according to the standards and procedures herein.
  - (2) Conflict of Interest. Members of SWAC shall not participate in or vote on any matter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member or if the applicant or other person subject to that decision is a person with whom the SWAC member has a close familial, business, or other associational relationship. In exercising quasi-judicial functions, members of SWAC shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.
    - a. Resolution of Objection. If an objection is raised to a SWAC member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of SWAC shall by majority vote rule on the objection.
    - b. Familial Relationship. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.
  - (3) Oath of Office. Any member of SWAC must take an oath-of-office before commencing any duties of the committee.
  - (4) Meeting Minutes. Minutes of the meeting proceedings must be taken and kept pursuant to the North Carolina Retention Schedule.
  - (5) Rules of Procedure. A copy of the Rules of Procedure adopted by SWAC shall be maintained by the clerk or other designated official and posted on the City of Charlotte website.
- (c) Administrative staff. No staff member shall make a final decision on an administrative decision required by this chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this article unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the city to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the city, as determined by the city. For purposes of this article, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(Ord. No. 3764, § 2(201), 11-26-2007)

Sec. 18-122. - Stormwater management permit.

- (a) *Stormwater management permit required.* A stormwater management permit is required for all proposed development and redevelopment unless exempt pursuant to this article. For the purpose of this article, the final approved stormwater management plan as contained in the development or redevelopment plan shall constitute the stormwater management permit.
- (b) *Submission of a stormwater management plan.*
  - (1) *General.* A preliminary stormwater management plan developed in accordance with the specifications set forth in the administrative manual must be submitted to the planning staff or land development division as part of the preliminary plan for development or redevelopment and will be reviewed in accordance with established procedures.
  - (2) *Stormwater management plan contents and form.* The stormwater administrator shall establish requirements for the content and form of the preliminary stormwater management plan. These general requirements shall be contained in the administrative manual, which may be amended from time to time.
  - (3) *Permit review fees.* A fee, as established by city council, shall accompany the submission of the preliminary stormwater management plan.
  - (4) *Complete submission.* A preliminary stormwater management plan will not be considered complete until it contains all elements required by the stormwater administrator, along with the appropriate fee. If the stormwater administrator finds that a preliminary stormwater management plan is incomplete, the applicant shall be notified of the deficient elements and provided with an opportunity to correct the plan. No review of the stormwater management plan will commence until the stormwater administrator has determined the plan is complete.
- (c) *Review and approval of stormwater management plan.*
  - (1) *Preparation by professional required.* The preliminary stormwater management plan shall be prepared by a registered state professional engineer or registered landscape architect. The engineer or registered landscape architect shall certify that the design of all stormwater management facilities and practices meets the requirements of these regulations.
  - (2) *Final approval of stormwater management plan.* If the stormwater administrator finds that the stormwater management plan complies with the requirements of these regulations, the stormwater administrator shall approve the stormwater management plan, which approval shall constitute the issuance of the permit. The stormwater administrator may impose conditions of approval as needed to ensure compliance with this article. The conditions shall be included in the permit as part of the approval.
  - (3) *Effect of the permit.* The permit issued under the provisions of this chapter shall remain valid for a period of three years from the date of approval. If no work on the site in furtherance of the plan has commenced within the three-year period, the permit and plan approval will become null and void and a new application will be required to develop the site. If work on the site in furtherance of the plan has commenced that involves any utility installations or street improvements except grading, the permit and plan shall remain valid and in force and the project may be completed in accordance with the approved plan.
  - (4) *Disapproval of stormwater management plan.* If the stormwater administrator disapproves the preliminary stormwater management plan, the grounds for such disapproval will be stated in writing to the applicant. After such disapproval, an appeal from that decision may be taken to SWAC in accordance with section 18-124. SWAC may approve, disapprove, in whole or in part, or otherwise modify the action of the stormwater administrator. A final stormwater management plan approved by SWAC, after appeal from the decision of the stormwater administrator, will qualify as the permit.

(Ord. No. 3764, § 2(202), 11-26-2007)

Sec. 18-123. - As-built plans and final approval.

The applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual "as-built" plans for all stormwater management facilities or practices after final construction is completed. Failure to provide approved as-built plans within the time frame specified by the stormwater administrator may result in assessment of penalties as specified in division 7. At the discretion of the stormwater administrator, performance securities or bonds may be required for stormwater management facilities or practices until as-built plans are approved.

As-built plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed, and location and size of all natural area and tree plantings. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this article. As conditions of the as-built plan(s) approval, the designer will submit a digital copy of the as-built plan(s) as described in the administrative manual to the stormwater administrator for the purpose of maintaining records, performing inspections, maintenance and other future needs as determined by the city.

Approved final as-built plans and a final inspection by the stormwater administrator are required before a project is determined to be in compliance with this article. At the discretion of the stormwater administrator, certificates of occupancy may be withheld pending receipt of as-built plans and the completion of a final inspection and approval of a project.

(Ord. No. 3764, § 2(203), 11-26-2007)

Sec. 18-124. - Appeals and variances.

(a) *Petition to SWAC for appeal or variance.* An appeal may be initiated by any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this article. A petition for variance from the requirements of this article may be initiated by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having written contractual interest in the affected property.

- (1) *Filing of notice of appeal.* A notice of appeal shall be filed with the stormwater administrator contesting any order, decision, determination or interpretation within 30 ~~working~~ days of ~~receipt of the written day of the~~ order, decision, determination or interpretation made or rendered by the stormwater administrator in the enforcement of this article, including assessments of remedies and penalties. If the notice of the administrator's decision, determination, or interpretation is sent by mail, it is presumed received on the third business day after it is sent. SWAC may waive or extend the 30-day deadline only upon determining that the person filing the notice of appeal received no actual or constructive form of notice of the order, decision, determination or interpretation being appealed. The notice filed with the stormwater administrator shall be accompanied by a nonrefundable filing fee as established by SWAC as well as a list of adjoining properties including tax parcel numbers and the name and address of each owner. Failure to timely file such notice and fee shall constitute a waiver of any rights to appeal under this article.

Upon receipt of a notice of appeal, the stormwater administrator shall transmit to SWAC copies of all administrative papers, records, and other information regarding the subject matter of the appeal.

The filing of such notice shall stay any proceedings in furtherance of the contested action, except the stormwater administrator may certify in writing to SWAC that because of facts stated in the certificate, a stay imposes an imminent peril to life or property or would seriously interfere

with the enforcement of this article. SWAC shall then review such certificate and may override the stay of further proceedings.

- (2) *Filing a variance petition.* A petition for variance, in the form prescribed by SWAC, shall be filed with the stormwater administrator accompanied by a nonrefundable filing fee as established by SWAC as well as a list of adjoining properties including tax parcel numbers and the name and address of each owner. Upon receipt of a variance petition, the stormwater administrator shall transmit to SWAC copies of all information regarding the variance.
- (3) *Notice and hearing.* SWAC shall, in accordance with the rules adopted by it for such purposes, hold public hearings on any appeal or variance petition which comes before it. SWAC shall, prior to the hearing, mail written notice of the time, place and subject of the hearing to the person or persons filing the notice of appeal or variance petition, to the owners of the subject property and to the owners of property ~~adjacent to~~ abutting the subject property. ~~The hearing shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence. In determining appeals of administrative decisions and variances, SWAC shall conduct an evidentiary hearing and follow the statutory procedures for all quasi-judicial decisions as required by G.S. Sec. 160D-406. All parties with standing shall be allowed to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments. For appeals of administrative decisions, the administrator or staff person who made the decision (or his or her successor if the person is no longer employed) shall be present at the quasi-judicial hearing to appear as a witness.~~
- (4) *Standards for granting an appeal.* SWAC shall reverse or modify the order, decision, determination or interpretation under appeal only upon finding an error in the application of this article on the part of the stormwater administrator. In modifying the order, decision, determination or interpretation, SWAC shall have all the powers of the stormwater administrator from whom the appeal is taken.

If SWAC finds that a violation of this article has occurred, but that in setting the amount of the penalty the stormwater administrator has not considered or given appropriate weight to either mitigating or aggravating factors, SWAC shall either decrease or increase the per day civil penalty within the range allowed by this article. Any decision of SWAC that modifies the amount of a civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which mitigating or aggravating factors exist and the appropriate weight that should have been given to such factors by the stormwater administrator in setting the amount of the civil penalty levied against the petitioner.

- (5) *Standards for granting a variance.* Before granting a variance, SWAC shall have made all the following findings:
  - a. Unnecessary hardships would result from the strict application of this article.
  - b. The hardships result from conditions that are peculiar to the property, such as the location, size or topography of the property.
  - c. The hardships did not result from actions taken by the petitioner.
  - d. The requested variance is consistent with the spirit, purpose, and intent of this article; will secure public safety and welfare; and will preserve substantial justice.
- (6) *Variance conditions.* SWAC may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(7) *Variance approvals.* Variance approvals attach to and run with the land pursuant to G.S. Sec. 160D-104.

- ~~(7)~~ (8) *Action by SWAC.* SWAC bylaws will determine the number of concurring votes needed to grant an appeal or request for variance. SWAC shall grant or deny the variance or shall reverse, affirm or modify the order, decision, determination or interpretation under appeal by recording in the minutes of the meeting the reasons that SWAC used and the findings of fact and conclusions of

law made by SWAC to reach its decision. Every committee decision shall be based upon competent, material, and substantial evidence in the record. Each committee decision shall be reduced to writing and reflect the committee's determination of contested facts and their application to the applicable standards. The decision of the committee shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the stormwater administrator, applicant/appellant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made.

- (89) *Rehearing.* SWAC shall refuse to hear an appeal or variance petition which has been previously denied unless it finds there have been substantial changes in the conditions or circumstances relating to the matter.
- (b) *Review by superior court.* Every decision of SWAC shall be subject to superior court review by proceedings in the nature of certiorari. Petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the later occurring of the following:
- (1) The decision of SWAC is ~~filed effective~~, or
  - (2) A written copy thereof is delivered to ~~every aggrieved party who has filed a written request for such copy with SWAC at the time of its hearing of the case the petitioning party. If the decision is sent by mail, three days shall be added to the time to file the petition.~~

(Ord. No. 3764, § 2(205), 11-26-2007)

**Editor's note**— Ord. No. 3764, § 2(205), adopted November 26, 2007, enacted provisions intended for use as subsections 1. and 2. To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as subsections (a) and (b).

Secs. 18-125—18-140. - Reserved.

### DIVISION 3. - STANDARDS

Sec. 18-141. - General standards.

All development and redevelopment to which this article applies shall comply with the standards of this section.

(Ord. No. 3764, § 3(301), 11-26-2007)

Sec. 18-142. - Watershed districts.

Standards for development and redevelopment vary depending on the watershed district in which a project is located as described in the "Post-Construction Ordinance Map of the City," which is adopted simultaneously herewith as described in subsection 18-105(d). The city is divided into the following watershed districts for purposes of this article:

- (1) *Central Catawba.* That area of land that drains to Sugar, Little Sugar and McAlpine Creeks in the city, including all tributaries, except Six Mile Creek.
- (2) *Western Catawba.* That area of land that drains to Lake Norman, Mountain Island Lake and Lake Wylie in Mecklenburg County including all creeks and tributaries.
- (3) *Yadkin-Southeast Catawba.* That area of land that drains to the Yadkin River basin in Mecklenburg County, including all creeks and tributaries and in addition including Six Mile Creek.

(Ord. No. 3764, § 3(302), 11-26-2007)

**Editor's note**— Ord. No. 3764, § 3(302), adopted November 26, 2007, enacted provisions intended for use as subsections (a)—(c). To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as subsections (1)—(3).

Sec. 18-143. - Standards for the Central Catawba district.

- (a) *Standards for low density projects.* Any drainage area within a project boundary in the Central Catawba district is considered low density when said drainage area has less than or equal to 24 percent built upon area as determined by the methodology established in the design manual. Such low-density projects shall comply with each of the following standards.
- (1) *Vegetated conveyances.* Stormwater runoff shall be transported by vegetated conveyances to the maximum extent practicable.
  - (2) *Stream buffers.* The S.W.I.M. stream buffer requirements apply in the Central Catawba as described in the jurisdiction's zoning ordinance, chapter 12. In addition, intermittent and perennial streams within the project boundary shall be delineated by a certified professional using U.S. Army Corps of Engineers and N.C. Division of Water Quality methodology and shall be shown in the stormwater management permit application along with all buffer areas. All perennial and intermittent streams draining less than 50 acres shall have a minimum 30-foot vegetated buffer including a ten-foot zone adjacent to the bank. Disturbance of the buffer is allowed; however, any disturbed area must be revegetated and disturbance of the ten-foot zone adjacent to the bank shall require stream bank stabilization using bioengineering techniques as specified in the design manual. All perennial and intermittent streams draining greater than or equal to 50 acres and less than 300 acres shall have a 35-foot buffer with two zones, including stream side and upland. Streams draining greater than or equal to 300 acres and less than 640 acres shall have a 50-foot buffer with three zones, including stream side, managed use and upland. Streams draining greater than or equal to 640 acres shall have a 100-foot buffer, plus 50 percent of the area of the floodfringe beyond 100 feet. This buffer shall consist of three zones, including stream side, managed use and upland. All buffers shall be measured from the top of the bank on both sides of the stream. The uses allowed in the different buffer zones as described in the S.W.I.M. stream buffer requirements in the city's zoning ordinance, chapter 12, as well as the other provisions of the S.W.I.M. ordinance shall apply in the Central Catawba district (except buffer widths).
- (b) *Standards for high density projects.* Any drainage area within a project boundary in the Central Catawba district is considered high density when said drainage area has greater than 24 percent built upon area as determined by the methodology established in the design manual. Such high-density projects shall implement stormwater treatment systems that comply with each of the following standards.
- (1) *Stormwater quality treatment volume.* Stormwater quality treatment systems shall treat the runoff generated from the first inch of rainfall.
  - (2) *Stormwater quality treatment.* All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for total suspended solids. Low impact development techniques as described in the design manual can be used to meet this requirement.
  - (3) *Stormwater treatment system design.* General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the design manual.
  - (4) *Stream buffers.* The S.W.I.M. stream buffer requirements apply in the Central Catawba as described in the city's zoning ordinance, chapter 12. In addition, intermittent and perennial streams within the project boundary shall be delineated by a certified professional using U.S. Army Corps of Engineers and N.C. Division of Water Quality methodology and shall be shown in the stormwater management permit application along with all buffer areas. All perennial and



intermittent streams draining less than 50 acres shall have a minimum 30-foot vegetated buffer including a ten-foot zone adjacent to the bank. Disturbance of the buffer is allowed; however, any disturbed area must be revegetated and disturbance of the ten-foot zone adjacent to the bank shall require stream bank stabilization using bioengineering techniques as specified in the design manual. All perennial and intermittent streams draining greater than or equal to 50 acres and less than 300 acres shall have a 35-foot buffer with two zones, including stream side and upland. Streams draining greater than or equal to 300 acres and less than 640 acres shall have a 50-foot buffer with three zones, including stream side, managed use and upland. Streams draining greater than or equal to 640 acres shall have a 100-foot buffer, plus 50 percent of the area of the floodfringe beyond 100 feet. This buffer shall consist of three zones, including stream side, managed use and upland. All buffers shall be measured from the top of the bank on both sides of the stream. The uses allowed in the different buffer zones as described in the S.W.I.M. stream buffer requirements in the jurisdiction's zoning ordinance, chapter 12, as well as the other provisions of the S.W.I.M. ordinance shall apply in the Central Catawba district (except buffer widths).

- (5) *Stormwater volume control.* Stormwater treatment systems shall be installed to control the volume leaving the project site at post-development for the one-year, 24-hour storm except I-1 and I-2 zoned developments which are exempt from this requirement. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- (6) *Stormwater peak control.* For residential land disturbing activities exceeding 24 percent built-upon area, peak control shall be installed for the appropriate storm frequency (i.e., 10-, 25-, 50- or 100-year, six-hour) as determined by the stormwater administrator based on a downstream flood analysis provided by the owner or designee using the criteria specified in the design manual or if a downstream analysis is not performed the peak shall be controlled for the ten-year and 25-year, six-hour storms. For commercial land disturbing activities exceeding 24 percent built-upon area, peak control shall be installed for the ten-year, six-hour storm and additional peak control provided for the appropriate storm frequency (i.e., 25-, 50- or 100-year, six-hour) as determined by the stormwater administrator based on a downstream flood analysis provided by the owner or designee using the criteria specified in the design manual or if a downstream analysis is not performed the peak shall be controlled for the ten-year and 25-year, six-hour storms. Controlling the one-year, 24-hour volume achieves peak control for the two-year, six-hour storm. For I-1 and I-2 zoned developments, peak control shall be installed for the two-year and ten-year, six-hour storms and additional peak control provided for the appropriate storm frequency (i.e., 25-, 50- or 100-year, six-hour) based on a downstream flood analysis or if a downstream analysis is not performed the peak shall be controlled for the two-year, ten-year and 25-year, six-hour storms. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater BMP shall be capable of safely passing a discharge with a minimum recurrence frequency as specified in the design manual. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.

(Ord. No. 3764, § 3(303), 11-26-2007)

Sec. 18-144. - Standards for the Western Catawba district.

- (a) *Standards for low density projects.* Any drainage area within a project boundary in the Western Catawba district is considered low density when said drainage area has less than or equal to 12 percent built-upon area as determined by the methodology established in the design manual. Such low-density projects shall comply with each of the following standards:
  - (1) *Vegetated conveyances.* Stormwater runoff shall be transported by vegetated conveyances to the maximum extent practicable.
  - (2) *Stream buffers.* The S.W.I.M. stream buffer requirements apply in the Western Catawba as described in the city's zoning ordinance, chapter 12 as do the buffers described for the watershed overlays contained in chapter 10. When there is a conflict between buffer requirements, the more



stringent always applies. In addition, intermittent and perennial streams within the project boundary shall be delineated by a certified professional using U.S. Army Corps of Engineers and N.C. Division of Water Quality methodology and shall be shown in the stormwater management permit application along with all buffer areas. All perennial and intermittent streams draining less than 50 acres shall have a minimum 30-foot vegetated buffer including a ten-foot zone adjacent to the bank. Disturbance of the buffer is allowed; however, any disturbed area must be revegetated and disturbance of the ten-foot zone adjacent to the bank shall require stream bank stabilization using bioengineering techniques as specified in the design manual. All perennial and intermittent streams draining greater than or equal to 50 acres and less than 300 acres shall have a 35-foot buffer with two zones, including stream side and upland. Streams draining greater than or equal to 300 acres and less than 640 acres shall have a 50-foot buffer with three zones, including stream side, managed use and upland. Streams draining greater than or equal to 640 acres shall have a 100-foot buffer, plus 50 percent of the area of the floodfringe beyond 100 feet. This buffer shall consist of three zones, including stream side, managed use and upland. All buffers shall be measured from the top of the bank on both sides of the stream. The uses allowed in the different buffer zones as described in the S.W.I.M. stream buffer requirements in the jurisdiction's zoning ordinance, chapter 12, as well as the other provisions of the S.W.I.M. ordinance shall apply in the Western Catawba district (except buffer widths).

- (b) *Development standards for high density projects.* Any drainage area within a project boundary in the Western Catawba district is considered high density when said drainage area has greater than 12 percent built upon area as determined by the methodology established in the design manual. The built upon area caps specified in the water supply watershed protection requirements contained in the city's zoning ordinance shall apply. High-density projects shall implement stormwater treatment systems that comply with each of the following standards:
- (1) *Stormwater quality treatment volume.* Stormwater quality treatment systems shall treat the runoff generated from the first inch of rainfall.
  - (2) *Stormwater quality treatment.* All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85 percent average annual removal for total suspended solids and 70 percent average annual removal for total phosphorus except I-1 and I-2 zoned developments which are exempt from the total phosphorus removal requirement. I-1 and I-2 zoned developments shall implement a management plan for the proper handling and application of pesticides and fertilizers to reduce negative water quality impacts. Low impact development techniques as described in the design manual can be used to meet pollutant removal requirements.
  - (3) *Stormwater treatment system design.* General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H . 1008(c), as explained in the design manual.
  - (4) *Stream buffers.* The S.W.I.M. stream buffer requirements apply in the Western Catawba [district] as described in the city's zoning ordinance, chapter 12 as do the buffers described for the watershed overlays contained in chapter 10. When there is a conflict between buffer requirements, the more stringent always applies. In addition, intermittent and perennial streams within the project boundary shall be delineated by a certified professional using U.S. Army Corps of Engineers and N.C. Division of Water Quality methodology and shall be shown in the stormwater management permit application along with all buffer areas. All perennial and intermittent streams draining less than 50 acres shall have a minimum 30-foot vegetated buffer including a ten-foot zone adjacent to the bank. Disturbance of the buffer is allowed; however, any disturbed area must be revegetated and disturbance of the ten-foot zone adjacent to the bank shall require stream bank stabilization using bioengineering techniques as specified in the design manual. All perennial and intermittent streams draining greater than or equal to 50 acres and less than 300 acres shall have a 35-foot buffer with two zones, including stream side and upland. Streams draining greater than or equal to 300 acres and less than 640 acres shall have a 50-foot buffer with three zones, including stream side, managed use and upland. Streams draining greater than or equal to 640 acres shall have a 100-foot buffer, plus 50 percent of the area of the floodfringe beyond 100 feet. This buffer shall consist of three zones, including stream side,

managed use and upland. All buffers shall be measured from the top of the bank on both sides of the stream. The uses allowed in the different buffer zones as described in the S.W.I.M. stream buffer requirements in the jurisdiction's zoning ordinance, chapter 12, as well as the other provisions of the S.W.I.M. ordinance shall apply in the Western Catawba district (except buffer widths).

- (5) *Stormwater volume control.* Stormwater treatment systems shall be installed to control the volume leaving the project site at post-development for the one-year, 24-hour storm except I-1 and I-2 zoned developments which are exempt from this requirement. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- (6) *Stormwater peak control.* For residential land disturbing activities exceeding 12 percent built-upon area, peak control shall be installed for the appropriate storm frequency (i.e., 10-, 25-, 50- or 100-year, six-hour) as determined by the stormwater administrator based on a downstream flood analysis provided by the owner or designee using the criteria specified in the design manual or if a downstream analysis is not performed the peak shall be controlled for the ten-year and 25-year, six-hour storms. For commercial land disturbing activities exceeding 12 percent built-upon area, peak control shall be installed for the ten-year, six-hour storm and additional peak control provided for the appropriate storm frequency (i.e., 25-, 50- or 100-year, six-hour) as determined by the stormwater administrator based on a downstream flood analysis provided by the owner or designee using the criteria specified in the design manual or if a downstream analysis is not performed the peak shall be controlled for the ten-year and 25-year, six-hour storms. Controlling the one-year, 24-hour volume achieves peak control for the two-year, six-hour storm. For I-1 and I-2 zoned developments, peak control shall be installed for the two-year and ten-year, six-hour storms and additional peak control provided for the appropriate storm frequency (i.e., 25-, 50- or 100-year, six-hour) based on a downstream flood analysis or if a downstream analysis is not performed the peak shall be controlled for the two-year, ten-year and 25-year, six-hour storms. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater BMP shall be capable of safely passing a discharge with a minimum recurrence frequency as specified in the design manual. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.

(Ord. No. 3764, § 3(304), 11-26-2007)

Sec. 18-145. - Standards for the Yadkin-Southeast Catawba district.

- (a) *Standards for low density projects.* Any drainage area within a project boundary in the Yadkin-Southeast Catawba District is considered low density when said drainage area has less than or equal to ten percent built upon area as determined by the methodology established in the design manual. Such low-density projects shall comply with each of the following standards:
  - (1) *Vegetated conveyances.* Stormwater runoff shall be transported by vegetated conveyances to the maximum extent practicable.
  - (2) *Stream buffers.* In addition, intermittent and perennial streams within the project boundary shall be delineated by a certified professional using U.S. Army Corps of Engineers and N.C. Division of Water Quality methodology and shall be shown in the stormwater management permit application along with all buffer areas. All perennial and intermittent streams draining less than 50 acres shall have a minimum 50-foot undisturbed buffer. All perennial and intermittent streams draining greater than or equal to 50 acres shall have a 100-foot undisturbed buffer, plus the entire floodplain. All buffers shall be measured from the top of the bank on both sides of the stream. The uses allowed in the stream side zone described in the S.W.I.M. stream buffer requirements in the jurisdiction's zoning ordinance, chapter 12, as well as the other provisions of the S.W.I.M. ordinance shall apply in the Yadkin-Southeast Catawba district (except buffer widths).

*Six Mile Creek watershed only.* In addition to the above information for streams in the Yadkin-Southeast Basin Watershed, all perennial streams in the Six Mile Creek Watershed shall have

200-foot undisturbed buffers, plus entire floodplain and all intermittent streams in the Six Mile Creek Watershed shall have 100-foot undisturbed buffers all measured on each side of the stream from top of bank.

- (b) *Standards for high density projects.* Any drainage area within a project boundary in the Yadkin-Southeast Catawba District is considered high density when said drainage area has greater than ten percent built upon area as determined by the methodology established in the design manual. Such high-density projects shall implement stormwater treatment systems that comply with each of the following standards:

- (1) *Stormwater quality treatment volume.* Stormwater quality treatment systems shall treat the runoff generated from the first inch of rainfall.
- (2) *Stormwater quality treatment.* All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85 percent average annual removal for total suspended solids and 70 percent average annual removal for total phosphorus except I-1 and I-2 zoned developments which are exempt from the total phosphorus removal requirement. I-1 and I-2 zoned developments shall implement a management plan for the proper handling and application of pesticides and fertilizers to reduce negative water quality impacts. Low impact development techniques as described in the design manual can be used to meet pollutant removal requirements.
- (3) *Stormwater treatment system design.* General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the design manual.
- (4) *Stream buffers.* In addition, intermittent and perennial streams within the project boundary shall be delineated by a certified professional using U.S. Army Corps of Engineers and N.C. Division of Water Quality methodology and shall be shown in the stormwater management permit application along with all buffer areas. All perennial and intermittent streams draining less than 50 acres shall have a minimum 50-foot undisturbed buffer. All perennial and intermittent streams draining greater than or equal to 50 acres shall have a 100-foot undisturbed buffer, plus the entire floodplain. All buffers shall be measured from the top of the bank on both sides of the stream. The uses allowed in the stream side zone described in the S.W.I.M. stream buffer requirements in the city's zoning ordinance, chapter 12, as well as the other provisions of the S.W.I.M. ordinance shall apply in the Yadkin-Southeast Catawba District (except buffer widths).

*Six Mile Creek watershed only.* In addition to the above information for streams in the Yadkin-Southeast Basin Watershed, all perennial streams in the Six Mile Creek Watershed shall have 200-foot undisturbed buffers, plus entire floodplain and all intermittent streams in the Six Mile Creek Watershed shall have 100-foot undisturbed buffers all measured on each side of the stream from top of bank.

- (5) *Stormwater volume control.* Stormwater treatment systems shall be installed to control the volume leaving the project site at post-development for the one-year, 24-hour storm except I-1 and I-2 zoned developments which are exempt from this requirement. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- (6) *Stormwater peak control.* For residential land disturbing activities exceeding ten percent built-upon area, peak control shall be installed for the appropriate storm frequency (i.e., 10-, 25-, 50- or 100-year, six-hour) as determined by the stormwater administrator based on a downstream flood analysis provided by the owner or designee using the criteria specified in the design manual or if a downstream analysis is not performed the peak shall be controlled for the ten-year and 25-year, six-hour storms. For commercial land disturbing activities exceeding ten percent built-upon area, peak control shall be installed for the ten-year, six-hour storm and additional peak control provided for the appropriate storm frequency (i.e., 25-, 50- or 100-year, six-hour) as determined by the stormwater administrator based on a downstream flood analysis provided by the owner or designee using the criteria specified in the design manual or if a downstream analysis is not performed the peak shall be controlled for the ten-year and 25-year, six-hour storms. Controlling the one-year, 24-hour volume achieves peak control for the two-year, six-hour storm. For I-1 and

I-2 zoned developments, peak control shall be installed for the two-year and ten-year, six-hour storms and additional peak control provided for the appropriate storm frequency (i.e., 25-, 50- or 100-year, six-hour) based on a downstream flood analysis or if a downstream analysis is not performed the peak shall be controlled for the two-year, ten-year and 25-year, six-hour storms. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater BMP shall be capable of safely passing a discharge with a minimum recurrence frequency as specified in the design manual. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.

(Ord. No. 3764, § 3(305), 11-26-2007)

Sec. 18-146. - Standards for stormwater control measures.

- (a) *Evaluation according to contents of design manual.* All stormwater control measures and stormwater treatment practices (also referred to as best management practices, or BMPs) required under this article shall be evaluated by the stormwater administrator according to the policies, criteria, and information, including technical specifications, standards and the specific design criteria for each stormwater best management practice contained in the design manual. The stormwater administrator shall determine whether these measures will be adequate to meet the requirements of this article.
- (b) *Determination of adequacy; presumptions and alternatives.* Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the design manual will be presumed to meet the minimum water quality and quantity performance standards of this article. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the design manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this article before it can be approved for use. The stormwater administrator may require the applicant to provide such documentation, calculations, and examples as necessary for the stormwater administrator to determine whether such an affirmative showing is made.
- (c) *Submittal of digital records.* Upon submittal of as-built plans, the location of storm drainage pipes, inlets and outlets as well as the location of all BMPs as well as natural area must be delivered to the stormwater administrator in the digital format specified in the administrative manual.

(Ord. No. 3764, § 3(306), 11-26-2007)

Sec. 18-147. - Total phosphorus mitigation.

- (a) *Purpose.* The purpose of this mitigation is to reduce the cost of complying with the 70 percent total phosphorus removal criteria for development and redevelopment with greater than or equal to 24 percent built-upon area while ensuring the reduction of pollution loads and achievement of the ordinance objectives.
- (b) *General description.* There are two total phosphorus mitigation options available to development and redevelopment greater than or equal to 24 percent built-upon area, including off-site mitigation and a buy-down option as described in this section. Both off-site and buy-down mitigation will result in the construction of retrofit BMPs in the same river basin (Catawba or Yadkin) as the mitigated site. In the Western Catawba district both forms of mitigation must occur in the watershed of the same named creek system for the purpose of ensuring a balance of total phosphorus loads to lake cove areas where phosphorus is a limiting pollutant with the exception that up to 30 percent of the buy-down money can be spent outside the watershed. In addition, the buy-down option is available provided the city has projects and/or property available for mitigation. There is no total phosphorus requirement in the Central Catawba District so the mitigation option is not necessary. The named creek (or drainage basin) systems referred to above include:

- (1) *Western Catawba*. Studman Branch, Porter Branch, Neal Branch, Stowe Branch, Beaverdam Creek, Little Paw Creek, Paw Creek, Long Creek, Gar Creek, and the Lower Mountain Island watershed.
  - (2) *Yadkin-Southeast Catawba*. Six Mile Creek, Twelve Mile Creek, Caldwell Creek, McKee Creek, Reedy Creek, Fuda Creek, Back Creek, Mallard Creek, and Lower Clarke Creek.
- (c) *Criteria for off-site mitigation.*
- (1) The owner or designee of a proposed construction site that will include greater than or equal to 24 percent built upon area shall construct a BMP retrofit project designed to achieve an equivalent or greater net mass removal of total phosphorus as would be achieved by removing 70 percent of the total phosphorus from the proposed site. Off-site mitigation is allowed only for total phosphorus removal above 50 percent. On-site BMPs shall be constructed to achieve 50 percent removal of total phosphorus from the project site.
  - (2) The stormwater administrator shall receive, review, approve, disapprove or approve with conditions an "Application for Off-Site Total Phosphorus Mitigation." The stormwater administrator shall design this application to include all pertinent information. This application shall be submitted with the stormwater management permit application and shall at a minimum contain a description of the BMP(s) to be constructed, including their type and size as well as the pollutant removal efficiencies to be achieved. The location of the site where the BMP(s) are to be constructed shall be described, including the size of the drainage area to be treated and percentage and type of existing built upon area. The application must also include the pounds of total phosphorus being mitigated for and the pounds of total phosphorus reduced with the retrofit BMP(s). A legally valid instrument shall be submitted with the application to demonstrate that the applicant has land rights to perform the BMP retrofit on the property.
  - (3) The criteria for approval of off-site total phosphorus mitigation by the stormwater administrator are as follows:
    - a. BMP(s) must be constructed in accordance with 15A NCAC 2H .1008(c), as explained in the design manual.
    - b. BMP(s) must be sized for the corresponding watershed area according to the design manual.
    - c. BMP(s) must be inspected by the stormwater administrator and found to be in compliance with all approved plans and specifications prior to the release of occupancy permits for the mitigated site.
    - d. Following approval from the stormwater administrator, BMP(s) may be installed and credits obtained for pounds of total phosphorus removed that can be applied to future projects. These credits can be accumulated or "banked" for a period of time as specified by the stormwater administrator in the administrative manual.
    - e. All off-site mitigation BMPs shall be subject to the maintenance requirements as well as installation and maintenance performance securities specified in division 6.
- (d) *Criteria for total phosphorus buy-down option.*
- (1) The owner or designee of a proposed construction site that will include greater than or equal to 24 percent built upon area may "buy-down" the 70 percent phosphorus removal requirement to no less than 50 percent. On-site BMPs must be installed to remove the remaining total phosphorus load. The money shall be used by the city to construct BMP retrofit projects designed to achieve an equivalent or greater net mass removal of total phosphorus as would be achieved by removing 70 percent of the total phosphorus from the proposed site.
  - (2) The stormwater administrator shall receive, review, approve, disapprove or approve with conditions an "application for total phosphorus buy-down." the stormwater administrator shall design this application to include all pertinent information. This application shall be submitted with the stormwater management permit application and shall at a minimum contain calculations

showing the total load buy-down and all cost calculations as described in the administrative manual.

(3) The criteria for the buy-down option are as follows:

- a. The buy-down option shall not be approved by the stormwater administrator unless projects and/or properties are available for mitigation, including BMP construction, BMP maintenance, BMP rehabilitation and stream restoration.
- b. There is no time constraint for the city to spend mitigation money; however, the city shall strive to spend buy-down monies in a timely and efficient manner such that a net improvement in water quality results.
- c. All BMPs constructed by the city as part of this mitigation option shall be maintained by the jurisdiction into perpetuity.

(4) The criteria for calculating the buy-down cost shall be provided in the administrative manual.

(Ord. No. 3764, § 3(307), 11-26-2007; Ord. No. 4752, 10-10-2011)

Sec. 18-148. - Deed recordation and indications on plat.

The approval of the stormwater management permit shall require an enforceable restriction on property usage that runs with the land, such as plat, recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans. The location of all designated natural area for a site shall be recorded at the Mecklenburg County Register of Deeds Office as "undisturbed natural area" or "re-vegetated natural area". Streams and buffer boundaries including the delineation of each buffer zone must be specified on all surveys and record plats. The applicable operations and maintenance agreement pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the Mecklenburg County Register of Deeds Office upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the Mecklenburg County Register of Deeds Office so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles. A copy of the recorded maintenance agreement shall be provided to the stormwater administrator within 14 days following receipt of the recorded document. A maintenance easement shall be recorded for every structural BMP to allow sufficient access for adequate maintenance. The specific recordation and deed restriction requirements as well as notes to be displayed on final plats and deeds shall be contained in the administrative manual.

(Ord. No. 3764, § 3(308), 11-26-2007; Ord. No. 4752, 10-10-2011)

Secs. 18-149—18-160. - Reserved.

#### DIVISION 4. - DEVELOPMENT AND REDEVELOPMENT MITIGATION

Sec. 18-161. - Mitigation payment.

- (a) *Lots less than one acre.* Development and redevelopment on a lot less than one acre in size are allowed to forego meeting the requirements of this article, except for required stream buffers, provided the city is paid a mitigation fee according to rates set forth in the administrative manual and provided such development and redevelopment are not part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.
- (b) *Transit station areas and distressed business districts.* Development and redevelopment projects within transit station areas designated by the planning director based on corridor record of decisions, council adopted station area plan or distressed business districts designated by the economic development director are allowed by right to forego meeting the requirements of this article, except for

required stream buffers and peak control and downstream analysis requirements on the increased impervious area of the project site, provided one of the following three measures are implemented on the site:

- (1) Provide 85 percent TSS removal from first inch of rainfall for entire project;
  - (2) Provide one-year, 24-hour volume control and ten-year, six-hour peak control for entire project;  
or
  - (3) Pay the city a mitigation fee according to rates set forth in the administrative manual for the pre-project built upon area and any additional impervious area not to exceed five acres. New impervious area in excess of five acres must comply with this article.
- (c) *Redevelopment not within transit station areas or distressed business districts.* Projects involving redevelopment of existing built-upon-area and the cumulative addition of less than 20,000 square feet of new built-upon-area are allowed by right to forego meeting the requirements of this article, except for required stream buffers and phosphorous requirements, provided the city is paid a mitigation fee according to rates set forth in the administrative manual for the post-project built-upon-area and, if required, onsite controls are installed for stormwater quality, and detention (i.e. volume and peak control) as well as quality stream protection in accordance with the provisions of the administrative manual.

(Ord. No. 3764, § 4(401), 11-26-2007; Ord. No. 4752, 10-10-2011; Ord. No. 5339, 4-28-2014; Ord. No. [5498](#), 10-27-2014; [Ord. No. 7062, § 1, 3-14-2016](#) )

Sec. 18-162. - Criteria for mitigation payment.

- (a) *Notification to stormwater administrator.* The buy-right mitigation option does not require approval by the stormwater administrator; however, notification that this right is to be exercised for a particular lot must be made prior to the issuance of any permits for the project. This notification is to be made to the stormwater administrator on a standard form provided in the administrative manual.
- (b) *Use of mitigation payment.* The city shall use the mitigation payment to install water quality enhancement measures, including but not limited to BMPs, stream restoration, natural area preservation, etc. BMP(s) installed using the mitigation payment must be constructed in accordance with 15A NCAC 2H .1008(c), as explained in the design manual. All BMPs constructed by the jurisdiction as part of this mitigation option shall be maintained by the jurisdiction into perpetuity. The city will pursue using these mitigation funds within the same watershed as the project site provided adequate resources and property are available.

(Ord. No. 3764, § 4(402), 11-26-2007)

Secs. 18-163—18-170. - Reserved.

#### DIVISION 5. - NATURAL AREA

Sec. 18-171. - Purpose.

Natural area provides for a reduction in the negative impacts from stormwater runoff through non-structural means. The combination of the structural BMPs described in division 3 with the non-structural natural area provisions described in this section allow the objectives of this article to be fulfilled.

(Ord. No. 3764, § 5(501), 11-26-2007)

Sec. 18-172. - General description.

Undisturbed natural area is required for all development unless mitigated. The percentage of natural area required depends on a project's built-upon area as described below. Natural area requirements can be met in stream or lake buffers, designated common areas or on individual lots for residential development (e.g., backyards, borders, etc.). Natural area requirements can be met in vegetated utility rights-of-way (including sewer, water, gas, etc.) at a ratio of one acre of right-of-way to one-fourth acre of natural area credit. Grass fields can be used to meet natural area requirements on a one-to-one ratio; however, the fields must be replanted in accordance with the tree planting provisions described in subsection 18-175(c). Natural area requirements can also be met in planting strips that are planted in trees in accordance with the city's tree ordinance, this article or other tree planting requirements for road rights-of-way at a ratio of one acre of planting strip to three-fourth acre of natural area credit. Natural area is preferred where it will provide maximum water quality benefit (i.e. around gullies and existing drainage areas, adjacent to streams and wetlands, around structural BMPs, etc.). Cluster provisions as well as tree and S.W.I.M. buffer ordinance incentives currently contained in the city's ordinances will continue to apply in the area designated to meet this natural area requirement.

(Ord. No. 3764, § 5(502), 11-26-2007)

Sec. 18-173. - Natural area criteria.

Natural Area requirements apply to projects as described below.

- (1) *Less than 24 percent built-upon area.* A project with less than 24 percent built-upon area shall include as natural area within the boundaries of the project a minimum of 25 percent of the project area.
- (2) *Greater than or equal to 24 percent and less than 50 percent built-upon area.* A project with greater than or equal to 24 percent and less than 50 percent built-upon area shall include as natural area within the boundaries of the project a minimum of 17.5 percent of the project area.
- (3) *Greater than or equal to 50 percent built-upon area.* A project with greater than or equal to 50 percent built-upon area shall include as natural area space within the boundaries of the project a minimum of ten percent of the project area.
- (4) *I-1 and I-2 development and redevelopment projects.* I-1 and I-2 zoned developments are exempt from the open space requirement in the Central and Western Catawba Districts.

(Ord. No. 3764, § 5(503), 11-26-2007)

**Editor's note**— Ord. No. 3764, § 5(503), adopted November 26, 2007, enacted provisions intended for use as subsections (A)—(D). To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as subsections (1)—(4).

Sec. 18-174. - Natural area designation.

For natural area areas that have remained undisturbed, the location of this area shall be recorded at the register of deeds office as "undisturbed natural area." For natural area areas that have been disturbed and revegetated, the location of this area shall be recorded at the register of deeds office as "revegetated natural area." The future disturbance of these areas is prohibited except for greenway trails with unlimited public access, private trails provided they are composed of pervious materials and comply with the S.W.I.M. stream buffer requirements, Charlotte-Mecklenburg Utility lines and channel work/maintenance activities by Charlotte-Mecklenburg stormwater services. Other utility work may be allowed in the natural area areas provided it will not result in loss of natural area as approved by the city.

(Ord. No. 3764, § 5(504), 11-26-2007)



## Sec. 18-175. - Natural area mitigation.

- (a) *Purpose.* The purpose of this mitigation is to reduce the cost of complying with the natural area requirement while ensuring the reduction of pollution loads and achievement of the article objectives.
- (b) *General description.* Approved disturbance to the natural area described in section 18-173 must be off-set by an allowable form of mitigation, including on-site and off-site mitigation as well as through payment-in-lieu.
- (c) *Natural area mitigation criteria.*
  - (1) *On-site mitigation.* On-site mitigation shall allow the disturbance of designated natural area on a project with the fulfillment of the following criteria on the project site:
    - a. Establishment of a minimum of six inches of top soil to the disturbed natural area following the completion of construction activities. This material may be obtained from on-site when available.
    - b. Planting of a minimum of 36 trees per acre of natural area as follows:
      - 1. Trees shall have a minimum caliper of one and one-half inches.
      - 2. Trees shall be of a quality set forth by the American Standard for Nursery Stock and will be selected from a list of acceptable native species for planting in natural area established by the jurisdiction.
      - 3. Planted trees shall contain a mix of at least three different species in roughly equal proportions and be "large mature shade tree species" as defined by the city.
      - 4. Trees shall be planted in accordance with specifications provided by the city.
      - 5. Trees shall be warranted for a minimum of two years following planting and any dead or diseased trees must be replaced.
    - c. The area around and between trees must be stabilized using an approved vegetative ground cover and mulch.
    - d. The slope of any graded or disturbed area that is dedicated for natural area can not exceed 3 to 1.
    - e. The flow of water across the natural area must be controlled to prevent soil erosion or mulch disturbance.
  - (2) *Off-site mitigation.* The city shall allow natural area disturbance and off-site mitigation through the acceptance for ownership or conservation easement properties for the protection of natural area. This off-site mitigation shall be located in the same delineated watershed as the project site. There are 20 delineated watershed districts used for mitigation purposes as follows: Sugar/Irwin, Little Sugar/Briar, McMullen, McAlpine, Four Mile, Six Mile, Stevens/Goose, Clear, McKee, Reedy, Back, Mallard, Clarks, Rocky River, McDowell, Gar, Long, Paw, Steele, Beaver Dam, and Stowe Branch. In the event property for purchase cannot be located within the same watershed district, the city shall designate an alternate watershed where there will be a net improvement in water quality protection such as designated impaired watersheds.
  - (3) *Payment in lieu of natural area dedication.* Payment in lieu of natural area dedication is only allowed for commercial development and multi-family development projects that are in excess of 50 percent built upon area. Payment in lieu shall only be allowed to the extent an approved disturbance cannot be offset by on-site mitigation as determined by the stormwater administrator. The following criteria shall be fulfilled for the payment in lieu option:
    - a. A fee shall be paid to the city where the property is located or its designee based on the following formula:  $1.25 \times$  (appraised value of subject property including intended use without improvements). The appraised value of the subject property shall be determined by a licensed, independent real estate appraiser retained by the developer or owner. The

jurisdiction may accept the appraised value or at its discretion obtain its own appraisal. In the event the parties cannot agree on the appraised value, the two appraised values shall be averaged together to determine the final appraised value to be used in the formula above.

- b. Payment shall be accepted by the city or its designee prior to land disturbing activities.
  - c. The city shall use the payment-in-lieu to purchase natural area in the same delineated watershed as the property to be disturbed. The 20 delineated watershed districts used for mitigation purposes are described in subsection (c)(2). As an option, the city may elect to use up to ten percent of the fee to purchase and plant trees within the city.
- (d) *Approval criteria for natural area mitigation.*
- (1) *Application for natural area mitigation.* The stormwater administrator shall receive, review, approve, disapprove or approve with conditions an "application for natural area mitigation." The stormwater administrator shall design this application to include all pertinent information, including at a minimum a "mitigation plan" describing the desired mitigation option as discussed in previous sections. An application for on-site mitigation shall show the location of the restored natural area on the property and the location, type and size of all trees and ground cover to be planted as well as contain a warranty statement for the trees. An off-site mitigation application shall show the location and description including acreage, etc. of the property to be used for mitigation and contain a legally valid instrument demonstrating that the applicant has legal title to the property for transfer to the city a payment in lieu application shall at a minimum contain the location and description of the site to be mitigated and an approved appraisal by a licensed, independent real estate appraiser.
  - (2) *Pre-approved natural area mitigation.* The following is pre-approved for on-site mitigation and does not require the submittal of an application to the stormwater administrator; however, these mitigation areas shall be described on the stormwater management permit application:  
  
*Residential, commercial and multifamily uses:* Forty percent of the required natural area as described in section 18-173 is pre-approved for on-site mitigation. Other forms of mitigation as described above must receive approval from the stormwater administrator.
- (e) *Natural area designation.* All designated natural area areas included as part of an approved mitigation must be recorded at the register of deeds office. For off-site mitigation and payment in lieu where natural area remains undisturbed, the location of this area shall be recorded at the register of deeds office as "undisturbed natural area." For natural area areas that have been disturbed and revegetated, the location of this area shall be recorded at the register of deeds office as "revegetated natural area." The future disturbance of these areas shall be in accordance with ordinance requirements, which allow for disturbances associated with the installation of greenway trails with unlimited public access, private trails provided they are composed of pervious materials and comply with S.W.I.M. stream buffer requirements, Charlotte-Mecklenburg Utility lines and channel work/maintenance activities by Charlotte-Mecklenburg stormwater services. Other utility work may be allowed in the natural area provided it will not result in loss of natural area as approved by the city.

(Ord. No. 3764, § 5(505), 11-26-2007)

Secs. 18-176—18-190. - Reserved.

#### DIVISION 6. - MAINTENANCE

Sec. 18-191. - Dedication of BMPs, facilities and improvements.

- (a) *Single-family residential BMPs accepted for maintenance.* The city shall accept maintenance responsibility (as specified in the administrative manual) of structural BMPs that are installed pursuant to this article following a warranty period of two years from the date of as-built certification described in section 18-123, provided the BMP:

- (1) Only serves a single-family detached residential site or townhomes all of which have public street frontage;
- (2) Is satisfactorily maintained during the two-year warranty period by the owner or designee;
- (3) Meets all the requirements of this article and the design manual; and
- (4) Includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance, repair or reconstruction.

The stormwater administrator must receive an application for transfer of maintenance responsibilities for the structural BMP along with the stormwater management permit application. The stormwater administrator will develop and distribute this application as a component of the administrative manual (see subsection 18-122).

- (b) *Maintenance and operation of BMPs.* The owner of a structural BMP installed pursuant to this article and not covered under subsection (a) shall maintain and operate the BMP so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.
- (c) *Damage or removal of trees.* The following provisions apply to trees contained in permitted natural area areas or in BMPs that are damaged or removed:
  - (1) For trees damaged or removed due to natural disasters, the owner shall be required to replace the trees in accordance with the natural area mitigation criteria described in subsection 18-175(c)(1) within a timeframe specified by the stormwater administrator.
  - (2) For trees damaged or removed due to reasons other than subsection (c)(1), the owner shall be required to replace the trees in accordance with the natural area mitigation criteria described in subsection 18-175(c)(1) within a timeframe specified by the stormwater administrator with the following exception, the trees shall be replaced at twice the specified density. In addition, the owner may be subject to fines as described in division 7.
- (d) *Annual maintenance inspection and report.* The person responsible for maintenance of any BMP installed pursuant to this article and not covered under subsection (a) shall submit to the stormwater administrator an inspection report from a qualified registered state professional engineer or registered landscape architect performing services only in their area of competence. All inspection reports shall be on forms supplied by the stormwater administrator that are contained in the administrative manual. An original inspection report shall be provided to the stormwater administrator beginning one year from the date of as-built certification and each year thereafter on or before the anniversary date of the as-built certification.

(Ord. No. 3764, § 6(601), 11-26-2007)

Sec. 18-192. - Operation and maintenance agreement.

- (a) *General.* At the time that as-built plans are provided to the stormwater administrator as described in section 18-123 and prior to final approval of a project for compliance with this article, but in all cases prior to placing the BMPs in service, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all current and subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Failure to execute an operation and maintenance agreement within the time frame specified by the stormwater administrator may result in assessment of penalties as specified in division 7. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement. At the discretion of the stormwater administrator, certificates of occupancy may be withheld pending receipt of an operation and maintenance agreement.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of

maintenance for the structural BMP. In addition, it shall grant to the city a right of entry in the event that the stormwater administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the city to assume responsibility for the structural BMP.

Standard operation and maintenance agreements for BMPs shall be developed by the stormwater administrator and made available in the administrative manual. The operation and maintenance agreement must be approved by the stormwater administrator prior to plan approval, and it shall be referenced on the final plat as described in section 18-148.

- (b) *Special requirement for homeowners' and other associations.* For all structural BMPs required pursuant to this article not covered under subsection 18-192(a), and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include the provisions described in the design manual.

(Ord. No. 3764, § 6(602), 11-26-2007)

Sec. 18-193. - Inspection program.

Inspections and inspection programs by the city may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the owner or occupant of any property refuses to permit such inspection, the stormwater administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the stormwater administrator while carrying out his or her official duties.

(Ord. No. 3764, § 6(603), 11-26-2007)

Sec. 18-194. - Performance security for installation and maintenance.

The city may require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in accordance with the provisions contained in the administrative manual.

(Ord. No. 3764, § 6(604), 11-26-2007)

Sec. 18-195. - Records of installation and maintenance activities.

The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the stormwater administrator.

(Ord. No. 3764, § 6(605), 11-26-2007)

Sec. 18-196. - Maintenance easement.

Every structural BMP installed pursuant to this article shall be made accessible for adequate inspection, maintenance, reconstruction and repair by a maintenance easement, which will be shown and labeled on all plans and plats. The easement shall be recorded to provided adequate and perpetual

access and sufficient area, in favor of the city or otherwise, for inspection, maintenance, repair or reconstruction. All BMPs that are not located adjacent to a public right-of-way will require the owner to provide a 20-foot wide access easement in favor of the city that connects the BMP area to the public right-of-way. The easement shall be described on all plans and plats as follows: "The purpose of the Post Construction Controls Easement (PCCE) is to provide stormwater conveyance and for the control and treatment of stormwater runoff. Buildings or any other objects which impede stormwater flow, system performance or system maintenance are prohibited. This easement also provides for unlimited access for inspection and maintenance purposes to be performed on the BMP as required by the City of Charlotte's Stormwater Ordinance Post Construction Controls Regulations." The easement shall be recorded as described in section 18-148 and its terms shall specify who may make use of the easement and for what purposes.

(Ord. No. 3764, § 6(606), 11-26-2007)

Secs. 18-197—18-210. - Reserved.

#### DIVISION 7. - VIOLATIONS AND ENFORCEMENT

Sec. 18-211. - Enforcement—Inspections and investigations.

- (a) Authority to inspect and investigate. The stormwater administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this article, or rules or orders adopted or issued pursuant to this article, and to investigate to determine whether the activity is being conducted in accordance with this article and the approved stormwater management plan, design manual and administrative manual and whether the measures required in the plan are effective. The stormwater administrator shall also have the power to require written statements, or the filing of reports under oath as part of an investigation.
- (b) No person shall resist, delay, obstruct, hamper or interfere with the stormwater administrator while the stormwater administrator is inspecting and/or investigating or attempting to inspect and/or investigate an activity under this article. The stormwater administrator, to the extent permitted by law, may seek the issuance of a search warrant to determine compliance with this article.
- (c) Inspection and/or investigation frequency. The inspections and investigations outlined above in subsection (a) may be conducted or established on any reasonable basis, including but not limited to: routine inspections and/or investigations; random inspections and/or investigations; inspections and/or investigations based upon complaints or other notice of possible violations; and joint inspections and/or investigations with other agencies inspecting and/or investigations under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

(Ord. No. 3764, § 7(701), 11-26-2007)

**Editor's note**— Ord. No. 3764, § 7(701), adopted November 26, 2007, enacted provisions intended for use as subsections (A)(1)—(3). To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as subsections (a)—(c).

Sec. 18-212. - Violations and enforcement.

- (a) *Violation unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this article, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article.

- (b) *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this article, as well as any person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use, development or redevelopment of the property on which the violation occurs shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. For the purposes of this article, responsible person(s) shall include but not be limited to:
- (1) *Person maintaining condition resulting in or constituting violation.* Any person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists.
  - (2) *Responsibility for land or use of land.* The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.
- (c) *Notice of violation and order to correct.* If, through inspection and/or investigation, it is found that any building, structure, or land is in violation of this article, the stormwater administrator shall notify in writing the responsible person/entity. The notice may be served by any means authorized under G.S. 1A-1, rule 4, or other means reasonably calculated to give actual notice. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation occurred or is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. The notice shall, if required, specify a date by which the responsible person/entity must comply with this article, and advise that the responsible person/entity is subject to remedies and/or penalties or that failure to correct the violation within the time specified will subject the responsible person/entity to remedies and/or penalties as described in section 18-213. In determining the measures required and the time for achieving compliance, the stormwater administrator shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits.
- If a violation is not corrected within a reasonable period of time, as provided in the notification, the stormwater administrator may take appropriate action, as provided in section 18-213, to correct and abate the violation and to ensure compliance with this article.
- (d) *Extension of time.* A responsible person/entity who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the stormwater administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the responsible person/entity requesting the extension, the stormwater administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The stormwater administrator may grant 30 day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the responsible person/entity violating this article. The stormwater administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.
- (e) *Emergency enforcement.* If a violation seriously threatens the effective enforcement of this article or poses an immediate danger to the public health, safety, or welfare or the environment, then the stormwater administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The stormwater administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty specified in section 18-213.

## Sec. 18-213. - Remedies and penalties.

- (a) *Civil penalties.* Any person who violates any of the provisions of this article or rules or other orders adopted or issued pursuant to this article may be subject to a civil penalty. A civil penalty may be assessed from the date the violation occurs. The stormwater administrator shall determine the amount of the civil penalty and shall notify the violator of the amount of the penalty and the reason for assessing the penalty. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation except as provided in subsection 18-212(d) in which case the penalty is assessed concurrently with a notice of violation. Refusal to accept the notice or failure to notify the stormwater administrator of a change of address shall not relieve the violator's obligation to comply with the article or to pay such a penalty.
- (b) *Each day a separate offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.
- (c) *Penalties assessed concurrent with notice of violation.* Penalties may be assessed concurrently with a notice of violation for any of the following, in which case the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt:
  - (1) Failure to submit a stormwater management plan;
  - (2) Performing activities without an approved stormwater management plan;
  - (3) Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties;
  - (4) A repeated violation for which a notice was previously given on the same project and to the same responsible person/entity responsible for the violation;
  - (5) Willful violation of this article; and
  - (6) Failure to install or maintain best management practices per the approved plan.
- (d) *Amount of penalty.* The civil penalty for each violation of this article may be up to the maximum allowed by law. In determining the amount of the civil penalty, the stormwater administrator shall consider any relevant mitigating and aggravating factors including, but not limited to, the effect, if any: of the violation; the degree and extent of harm caused by the violation; the cost of rectifying the damage; whether the violator saved money through noncompliance; whether the violator took reasonable measures to comply with this article; whether the violation was committed willfully; whether the violator reported the violation to the stormwater administrator; and the prior record of the violator in complying or failing to comply with this article or any other post-construction ordinance or law.
- (e) *Failure to pay civil penalty assessment.* If a violator does not pay a civil penalty assessed by the stormwater administrator within 30 days after it is due, or does not request a hearing as provided in subsection (c), the stormwater administrator shall request the initiation of a civil action to recover the amount of the assessment. The civil action shall be brought in Mecklenburg County superior court or in any other court of competent jurisdiction. A civil action must be filed within three years of the date the assessment was due. An assessment that is appealed is due at the conclusion of the administrative and judicial review of the assessment.
- (f) *Appeal of remedy or penalty.* The issuance of an order of restoration and/or notice of assessment of a civil penalty by the stormwater administrator shall entitle the responsible party or entity to an appeal before the stormwater advisory committee (SWAC) if such person submits written demand for an appeal hearing to the clerk of SWAC within 30 days of the receipt of an order of restoration and/or notice of assessment of a civil penalty. The demand for an appeal shall be accompanied by a filing fee as established by SWAC. The appeal of an order of restoration and/or notice of assessment of a civil penalty shall be conducted as described in section 18-124.
- (g) *Additional remedies.*

- (1) *Withholding of certificate of occupancy.* The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (2) *Disapproval of subsequent permits and plan approvals.* As long as a violation of this article continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold, and the stormwater administrator may disapprove, any request for permit or plan approval or authorization provided for by this article or the zoning, subdivision, and/or building regulations, as appropriate for the land on which the violation occurs.
- (3) *Injunction, abatements, etc.* The stormwater administrator, with the written authorization of the city manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this article. Any person violating this article shall be subject to the full range of equitable remedies provided in the general statutes or at common law.
- (4) *Correction as public health nuisance, costs as lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. 160A-193, the stormwater administrator, with the written authorization of the city manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
- (5) *Restoration of areas affected by failure to comply.* By issuance of an order of restoration, the stormwater administrator may require a person who engaged in a land disturbing activity and failed to comply with this article to restore the waters and land affected by such failure so as to minimize the detrimental effects of the resulting pollution. This authority is in addition to any other civil penalty or injunctive relief authorized under this article.
- (h) *Criminal penalties.* Violation of this article may be enforced as a misdemeanor subject to the maximum fine permissible under state law.

(Ord. No. 3764, § 7(703), 11-26-2007)



Chapter 19 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES<sup>[1]</sup>

## Footnotes:

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**Cross reference**— Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, etc., any street or public way in the city saved from repeal, § 1-8(6); any ordinance providing for local improvements and assessing taxes for such improvements saved from repeal, § 1-8(9); any ordinance establishing or prescribing street grades in the city saved from repeal, § 1-8(16); aviation, ch. 4; buildings and building regulations, ch. 5; use of streets for cable communications, § 6-140; peddlers, § 6-431 et seq.; cemeteries, ch. 7; floods, ch. 9; motor vehicles and traffic, ch. 14; vehicles blocking streets, § 14-220; riding bicycles, § 14-251 et seq.; running or jogging on public streets, highways, § 14-283; littering public places, § 15-16; stormwater, ch. 18; subdivisions, ch. 20; trees, ch. 21; vehicles for hire, ch. 22; water, sewers and industrial waste discharge restrictions, ch. 23; zoning, app. A.

**State Law reference**— Streets generally, G.S. 160A-296 et seq.; roads and highways, G.S. 136-4 et seq.

## ARTICLE I. - IN GENERAL

## Sec. 19-1. - 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:

*Director/engineer* means the director of the department of transportation and/or the city engineer or their designees. When authority is granted to the director/engineer, the director of the department of transportation and the city engineer may, by administrative agreement or practice, determine whether the authority is to be exercised jointly or by one, with or without consultation with the other.

*Right-of-way* means the area on, below, and above an existing or proposed public roadway, highway, street, bicycle lane, or sidewalk, and associated adjacent land, in which the city has a property interest, whether by easement or fee and regardless of how acquired or established, for public travel and utility purposes. For purposes of this chapter, the term "right-of-way" does not include property held or acquired primarily for the purpose of the movement of public transit vehicles, including railroad rights-of-way.

**Cross reference**— Definitions generally, § 1-2.

## Sec. 19-2. - Damaging or moving guide stakes or markers; failure to conform.

It shall be unlawful for any person to damage, move or cause to be moved any of the stakes or markers set as guides for locating or grading any lots, streets, sidewalks or drains or to fail to conform to such stakes or markers, by locating or grading in any way different from or contrary thereto.

(Code 1985, § 19-5)

## Sec. 19-3. - Heavy equipment; scattered stones.

- (a) It shall be unlawful for any person to drive, run or operate any tractor, machine or heavy vehicle of any character upon or over any paved street, sidewalk, curb or gutter in such a manner so as to damage the permanent pavement, sidewalk, curb or gutter.

- (b) It shall be unlawful for any person to throw or scatter any stones or other hard substances upon, or allow stones or other hard substances to migrate onto, any paved street, sidewalk, curb or gutter so as to damage the permanent pavement, sidewalk, curb or gutter.
- (c) The city may require the person responsible for damaging the pavement, sidewalk, curb or gutter in violation of this section to repair or restore the pavement, sidewalk, curb or gutter within a reasonable period of time, which time shall be set in consideration of the harm or risk created by the damage and the effort and expense of repair. The city may, at its option, make any or all repairs or restorations to the pavement, sidewalk, curb or gutter and charge the expense of the repairs and restorations to the person responsible for the damage.

(Code 1985, § 19-14)

Sec. 19-4. - Potentially dangerous fences.

It shall be unlawful to erect or maintain, or cause to be erected or strung, any barbed wire fence, or plain wire, stakes or other obstructions, on the line or border of any sidewalk or street or so close thereto as to be likely to injure any person within the city limits.

(Code 1985, § 19-21)

Sec. 19-5. - Congregating on sidewalks.

It shall be unlawful for any persons to congregate, crowd together, stand around or move slowly about so as to impede, hamper, interfere or obstruct the free passage or movement of pedestrians along or upon any sidewalk within the city; provided, however, that, this section shall not be construed to prohibit peaceful and lawful picketing.

(Code 1985, § 19-26)

Sec. 19-6. - Gutters and drains.

It shall be unlawful to obstruct or in any way interfere with any gutter, ditch, or other manmade or natural water drains located in the right-of-way. The city may require the person who has placed or who maintains an obstruction in violation of this section to remove the obstruction and repair or restore the drain within a reasonable period of time, which time shall be set in consideration of the harm or risk created by the obstruction and the effort and expense of removal. The city may, at its option, remove an obstruction and charge the expense of the removal, restoration, and repair to the person who placed or maintained the obstruction.

(Code 1985, § 19-28)

Sec. 19-7. - Responsibility for dirt and debris on streets and sidewalks.

It shall be unlawful for the contractor in charge of a construction project, or for any person who undertakes, on his own, the removal and conveyance of any dirt, mud, construction materials or other debris, to allow any dirt, mud, construction materials or other debris to be deposited upon any street or sidewalk and then to fail to remove the dirt, mud, construction materials or other debris from the street or sidewalk. Any contractor or any person violating or failing, refusing or neglecting to comply with this section shall be punished by a fine not to exceed \$50.00, or imprisonment for not more than 30 days, for each and every offense. By authority of G.S. 160A-175(g), each day's continuing offense shall be a separate and distinct offense. This section may be enforced by any one, or all, or a combination of the

remedies authorized and prescribed by G.S. 160A-175. This section shall be administered and enforced by the community improvement division of the solid waste department.

(Code 1985, § 19-30)

Sec. 19-8. - Local improvements; corner lots; partial exemption from assessment.

- (a) Whenever local improvements are made under assessment procedures along both sides of a corner lot at the same time or within a period of ten years, such corner lot, if used for residential purposes or if undeveloped and zoned for residential use, shall be exempt from a second assessment within such ten-year period in an amount equivalent to the cost assessable against:
- (1) Seventy-five percent of the frontage last improved;
  - (2) If improved at the same time, 75 percent of the longest frontage; or
  - (3) In either case, the per-front-foot cost of such improvement times 50, whichever is less.
- (b) The cost of such exemption shall be borne by the city.

(Code 1985, § 19-35)

Sec. 19-9. - Walkways prerequisite to tearing down, remodeling or repairing buildings.

It shall be unlawful for any person, his agent, licensee, or permittee, to tear down any buildings or remodel or repair, or cause to be torn down, remodeled or repaired, any building, until such person, his agent, or licensee or permittee shall have first erected or caused to be erected a suitable walkway, under the direction of the director of transportation and building inspector, so as not to interfere with pedestrians or the general traveling public and, further, to protect such pedestrians or traveling public from bodily harm and danger.

(Code 1985, § 19-36)

Sec. 19-10. - Playing games in streets.

It shall be unlawful for any person to play any game on any public street in the city.

(Code 1985, § 19-38)

Secs. 19-11—19-35. - Reserved.

ARTICLE II. - ADMINISTRATION<sup>2</sup>

Footnotes:

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**Cross reference**— Administration, ch. 2.

Sec. 19-36. - Authority of director/engineer.

In addition to the authority granted elsewhere in this chapter, the director/engineer is authorized to:

- (1) Administer and enforce this chapter.
- (2) Locate, stake, mark, and map rights-of-way; streets; sidewalks; street boundaries of lots; and the grade of streets, sidewalks and drains.
- (3) Name and rename streets.
- (4) Approve and execute encroachment agreements.
- (5) Adopt, amend, and repeal rules and regulations governing driveway connections to public streets and issue and revoke driveway connection permits.
- (6) Adopt, amend, and repeal rules and regulations governing street and sidewalk excavations and issue and revoke excavation permits.
- (7) Adopt, amend, and repeal the Charlotte-Mecklenburg Land Development Standards Manual (CLDSM).

(Code 1985, §§ 19-3, 19-4, 19-7, 19-51)

#### Sec. 19-37. - Conflicts of Interest

For the purposes of this ordinance, the following conflicts of interest standards shall apply:

- (1) Administrative Staff. – No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.
- (2) Familial Relationship. – For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

#### 19-38. - Inspections and investigations of sites

- (a) ~~Agents, officials or other qualified persons designated by the~~ Administrative staff of the city are authorized to inspect the sites subject to this chapter to determine compliance with this chapter, the terms of applicable development approval, or rules or orders adopted or issued pursuant to this chapter. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

No person shall refuse entry or access to any authorized city representative or agent who requests

entry for the purpose of inspection, nor shall any person resist, delay, obstruct or interfere with such authorized representative while in the process of carrying out official duties.

(eb) If, through inspection, it is determined that a property owner or person in control of the land has failed to comply or is no longer in compliance with this chapter or rules or orders issued pursuant to this chapter, the city will serve may issue a written notice of violation. As specified by G.S. Sec. 160D- 404(a), the notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of the violation may be posted on the property. The person providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. The notice may be served by any means authorized under G.S. 1A-1, rule 4, or any other means reasonably calculated to give actual notice, such as facsimile or hand delivery. A notice of violation shall identify the nature of the violation and shall set forth the measures necessary to achieve compliance with this chapter. The notice shall inform the person whether a civil penalty will be assessed immediately or shall specify a date by which the person must comply with this chapter. The notice shall advise that failure to correct the violation within the time specified will subject that person to the civil penalties as provided in section 21-124 or any other authorized enforcement action.

-(ec) The city shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose may enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites subject to this chapter as specified by G.S. Sec. 160D-403(e) and subsection (a) of this section.

Secs. 19-37—19-65. - Reserved.

### ARTICLE III. - DRIVEWAY CONNECTIONS

Sec. 19-66. - Compliance with construction requirements.

Except where otherwise governed and specified by the state department of transportation driveway entrance regulations, it shall be unlawful to construct, maintain, or use a driveway connecting to a public street except in accordance with the city's driveway connection rules and regulations and the terms and conditions of a valid and unrevoked driveway connection permit.

(Code 1985, §§ 19-52, 19-60)

Sec. 19-67. - Notification and inspection.

The ~~planning department~~~~engineering department~~ shall be notified by any person doing work authorized by permit under this article when forms are placed for driveways or sidewalks made ready for the pouring of concrete. Upon such reasonable notification, the ~~planning department~~~~city engineer or his representative~~ shall make an inspection of the work in order to verify compliance with the applicable rules and regulations.

(Code 1985, § 19-53)

Sec. 19-68. - Curb and gutter.

When it is determined that curb and gutter are necessary so as to allow for safe use of a driveway connection, the city may require as a condition in a driveway connection permit that curb and gutter be constructed where it does not exist along the entire property frontage or that portion of the frontage deemed necessary to allow for safe use of the driveway connection.

(Code 1985, § 19-54)

Sec. 19-69. - Permit expiration, permit revocation and driveway abandonment.

(a) Applications for driveway connection permits may be made by the property owner, a lessee or person holding an option or contract to purchase or lease the property, or an authorized agent of the property owner.

(b) Driveway connection permits shall be issued in writing and provided in print or electronic form to the property owner and to the party who applied for the driveway connection permit if different from the owner. If an electronic form is used, it must be protected from further editing. An easement holder may also apply for a driveway connection permit for such development that is authorized by the easement.

(c) Driveway connection permits attach to and run with the land.

Construction of a driveway connection must be completed within one year after the issuance of a driveway connection permit. An extension may be granted upon a showing that valid reasons exist for the delay. A request for an extension must be submitted in writing at least 14 days prior to the permit expiration date.

(b) A driveway connection permit may be revoked for failure to comply with city's driveway connection rules and regulations or the terms and conditions of a driveway connection permit. If a driveway connection permit is revoked, the city may require the permittee or property owner to physically eliminate the driveway and replace or repair the sidewalk. If the permittee or property owner does not physically eliminate the driveway and replace or repair the sidewalk within a reasonable period of time, the city may do so and charge the expense to the permittee or property owner.

(c) If a driveway connection is abandoned, the city may require the permittee or property owner to physically eliminate the driveway and replace or repair the sidewalk. If the permittee or property owner does not physically eliminate the driveway and replace or repair the sidewalk within a reasonable period of time, the city may do so and charge the expense to the permittee or property owner.

(Code 1985, §§ 19-57, 19-59)

Sec. 19-70. — Performance guarantees~~Bond~~.

The city may, in its sole discretion, authorize the issuance of a certificate of occupancy or authorize the use of a driveway connection prior to completion of all work required in a driveway connection permit if by requiring the permittee to issues a performance guarantee to the city post a bond to ensure the completion of required work. The amount of the performance guarantee shall not exceed 125% of the reasonably estimated cost of completion at the time the performance guarantee is issued. The City, in consultation with other affected agencies, such as the department of environmental health, with sureties performance guarantees satisfactory to the city guaranteeing the installation of the required improvements allowing credit for improvements completed prior to the submission of the final plat, may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include 100% of the cost for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional 25% allowed under this section includes inflation and all costs of administration regardless of how such fees or charges are denominated. The duration of the

performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed 125% of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time. Upon completion of the improvements and the submission of as-built drawings, as required by this chapter, written notice thereof must be given by the subdivider to the appropriate engineering department. The engineering department will arrange for an inspection of the improvements and, if found satisfactory, will, within 30 days of the date of the notice, provide written acknowledgement to the developer that the required improvements have been completed and authorize in writing the release or return of the security performance guarantees given, subject to the warranty requirement.

The developer shall have the option to post one type of a performance guarantee, in lieu of multiple bonds, letters of credit, or other equivalent security, for all matters related to the same project requiring performance guarantees.

(Code 1985, § 19-58)

Sec. 19-71. ~~— Minor Modification~~Variance.

The city may, in its sole discretion, grant a ~~minor modification~~variance from the driveway connection rules and regulations in order to preserve a tree within a public right-of-way for which a tree removal permit is required under section 21-63 of this Code and the granting of such a ~~modification~~variance would not be inconsistent with the objectives and spirit of the driveway connection rules and regulations.

(Code 1985, § 19-61)

Secs. 19-72—19-95. - Reserved.

#### ARTICLE IV. - NUMBERING OF BUILDINGS<sup>[3]</sup>

Footnotes:

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**Editor's note**— Ord. No. 2375, § 1, adopted September 8, 2003, amended article IV, §§ 19-101—19-107 in its entirety to read as herein set out. Formerly, article IV pertained to similar subject matter and derived from the Code of 1985, §§ 19-96—19-101.

**Cross reference**— Buildings and building regulations, ch. 5.

Sec. 19-96. - Purpose and intent.

The display of a street address number on each residential, commercial or institutional building is required:

- (1) To serve as a navigation reference to expedite response by fire, police, medical and other public safety responders in emergencies,
- (2) To enable address identification from vehicles moving at the prevailing speed on adjacent roadways to maintain traffic flow.

- (3) To facilitate mail and package deliveries; and
- (4) To associate real property with tax, zoning and other government records.

(Ord. No. 2375, § 1, 9-8-2003)

Sec. 19-97. - General requirements.

- (a) It shall be the duty of each owner of a residential, institutional or commercial building to display the proper street address on the front thereof.
- (b) One and two family dwellings shall display street address numbers on the structure that are at least four inches (102mm) in height with a minimum stroke width (line thickness) of 0.5 inch (12.7 mm) and be clearly legible from the nearest travel way.
- (c) Except where the fire marshal has determined that they are not adequately legible from the road, structures displaying address numbers which are three inches high or more and which were erected prior to the passage of this section of the code may remain in place until they are removed for renovation or any other reason, at which time they must be brought into conformance with subsections (b) and (d).
- (d) Except where provided in subsection (c) above, commercial, multi-family and institutional buildings shall display street address numbers at least four inches in height or one inch in height for every ten feet of distance between the displayed number and the centerline of the adjacent roadway, whichever is greater. Maximum number size will not exceed 1.5 times the required size and not exceed 30 inches total.
- (e) Should the commercial, multi-family or institutional structure be too far from the public or private travel way for required numbers to be seen, the property owner shall also erect, where the main driveway to the building intersects the public travel way, an additional set of numerals which can be easily read from vehicles traveling at the prevailing speed on the roadway.
- (f) On lots adjoining more than one street, placement of address numbers on structures shall make clear to which street or road the number refers. Where this cannot be attained by choice of placement location, both the street name and number shall be displayed (e.g., 234 Bay Street).

(Ord. No. 2375, § 1, 9-8-2003)

Sec. 19-98. - Assignment of numbers.

Mecklenburg County's director of land use and environmental services and/or his agent shall be responsible for assigning proper street address numbers. Property owners shall apply by telephone, mail or in person to the LUESA mapping and addressing department for the assignment of the proper address.

(Ord. No. 2375, § 1, 9-8-2003)

Sec. 19-99. - Applicable rules.

The following rules shall apply in the numbering of buildings:

- (1) The reference streets for numbering are:
  - a. North Tryon Street from Trade Street to Charlotte City Limits; thence along U.S. Highway 29 to the Cabarrus County line.
  - b. South Tryon Street from Trade Street to Camden Road; thence along Camden Road to the Southern Railroad; thence along the Southern Railroad south to the beginning of Nations



Crossing Road; crossing I-77 and running along Marshall Air Drive; thence along Nations Ford Road to the York County Line.

- c. West/Trade Street from Tryon Street to Rozzelles Ferry Road; thence along Rozzelles Ferry Road to Valleydale Road; thence along Mount Holly Road to the Gaston County line.
  - d. East Trade Street from Tryon Street to South McDowell Street; thence along South McDowell Street to East Fourth Street; thence along East Fourth Street to Randolph Road; thence along Randolph Road to Sardis Road; thence along Sardis Road to Matthews Township Parkway; thence along Matthews Township Parkway to John Street in Matthews; thence south along John Street to the Union County Line.
- (2) Streets intersecting these streets shall begin at number 100, the second block shall begin at number 200, the third block shall begin at number 300, and so on.
  - (3) Going away normally from these reference streets the even numbers shall be on the right hand side and the odd numbers shall be on the left hand side.
  - (4) Lots, which do not have frontage on the street being numbered but achieve access off that street shall be numbered based upon where their access intersects the street.
  - (5) Other streets not intersecting reference streets and streets which are not extensions which intersect these reference streets shall, on the end of the street nearest a reference street begin with a block number which corresponds with an adjacent parallel street which does intersect one of these reference streets, and the same system, of numbering the block is to be followed out as noted in subsection (2), assigning a new 100 (or block number) to each block. If a block is 800 feet long or more with no intersecting street in between, then a new block number shall begin at the most logical place for a street to be cut through it, or half-way between the long block corners, or, if the street is long enough without intersecting streets, then new block numbers shall begin at intervals of 500 feet.
  - (6) A new block number is to be assigned to each block that enters the street being numbered, regardless of whether the street continues across it, and the block number shall change directly opposite the point where this dead end street enters the street being numbered. In case of a slight offset in intersecting streets, then the block number will change at the street intersections instead of directly opposite each entering street.
  - (7) Upon annexation by the city, city street names shall be extended to the new city limits and property owners shall receive street name change notification from the land use and environmental services agency.

(Ord. No. 2375, § 1, 9-8-2003)

Sec. 19-100. - Owner or occupant's duty to number upon notice.

- (a) Implementation of mechanized systems and their reconciliation with existing paper records may require a change of assigned address for a property or structure. To assure the properly integrated functioning of public safety systems, the assigned address used in the county's master address table shall always become the permanent referent address for the property.
- (2) Within 30 days of the receipt of a notice from the director of land use and environmental services and/or his agent assigning an address to a particular building, the owner or occupant of the building shall display, or cause to be displayed, the assigned address.

(Ord. No. 2375, § 1, 9-8-2003)

Sec. 19-101. - Removing, defacing or allowing incorrect numbers to remain.

It shall be unlawful for any person to remove or deface a street address which is displayed in accordance with section 19-97 of this article. It shall also be unlawful to allow an incorrect street address to remain on a building.

(Ord. No. 2375, § 1, 9-8-2003)

Sec. 19-102. - Enforcement; penalties.

A violation of this article shall also be a violation of the city's fire code. Fire inspectors and fire officers of the rank of captain or above shall be responsible for the enforcement of this article, and a violation thereof shall be subject to the penalties provided for in sections 8-5 and 8-6.

(Ord. No. 2375, § 1, 9-8-2003)

Secs. 19-103—19-135. - Reserved.

ARTICLE V. - NON-UTILITY STREET CUTS AND LANE CLOSURES<sup>[4]</sup>

Footnotes:

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**Editor's note**— Ord. No. 3730, § 2, adopted October 22, 2007, changed the title of article V from "utilities, street cuts and lane closures" to "Non-utility street cuts and lane closures."

Sec. 19-136. - Utility exception.

The provisions of this article shall not apply to a utility as defined in section 19-332 or a person acting on behalf of a utility. A utility is instead subject to article XIII.

(Ord. No. 3730, § 3, 10-22-2007)

**Editor's note**— Ord. No. 3730, § 3, adopted October 22, 2007, amended § 19-136 in its entirety to read as herein set out. Formerly, § 19-136 pertained to connections of underground mains, pipes and conduits before street paving, and derived from the Code of 1985, § 19-6.

Sec. 19-137. - Permit required.

No person shall dig or make any excavation in or close or fill in any city street or sidewalk for any purpose whatever, without first making an application for and obtaining the written permission of the city manager or his representative.

(Code 1985, § 19-76; Ord. No. 3730, § 4, 10-22-2007)

Sec. 19-138. - Bond.

- (a) No license or permit for excavation shall be issued to any person until such person shall have filed a bond, in an amount determined by the director/engineer, which shall be posted with the city. The bond shall cover and embrace any work, opening or excavation done or performed under any such permit

or license issued during a period of 12 months after the date of such bond. Such bond shall indemnify the city from all claims, suits, actions and proceedings of every character, which may be brought against it for any injuries or damages to person or property received or sustained by any person resulting from any accident that may occur upon any work or excavation done by authority of any such license or permit, whether caused by the negligence of such licensee or permittee, his agent, servant or employees, or otherwise; from any unforeseen contingency that may occur; or from any act of omission or commission of such licensee or permittee, his agent, servant or employees, during the performance of any such work or excavation; and to guarantee payment to the city for inspection fees and any work done by the city caused by the work done under the permit, whether for street resurfacing, the correction of defective work, correction of work not done according to city ordinances, or otherwise.

- (b) The bond required in subsection (a) of this section shall not be exacted or collected from any person doing or performing any work or excavation by virtue and under authority of any contract with the city for such work or excavation.

(Code 1985, § 19-77)

Sec. 19-139. - Duty of excavator to notify fire department and city engineer; limitations on openings.

- (a) Every person making an opening pursuant to this article shall notify the city engineer and fire department in writing when a street is closed, or about to be closed, for the purpose of making a cut, and the city manager or his representative shall notify the fire department in writing when the street is opened for travel.
- (b) Every person making an opening shall work diligently and continuously to complete the work.
- (c) No opening or cut shall at any one time exceed in length two city blocks or extend across more than one-half of the width of any street. Upon completion of the cut, including tests and approval of the plumbing inspector in the cases regulated by the city plumbing, such person shall immediately backfill, remove surplus material and repave the opening according to instructions from and under the supervision of the city engineer and open the street or sidewalk for travel before proceeding with construction in the adjacent block or other half of the street.
- (d) If the applicant elects that the city do the backfilling or any part of the repairs, he shall immediately notify the office of the city engineer when the opening is ready for the city forces to begin work. In this case the city assumes the responsibility for any barricading or lighting of only that portion of the opening on which repairs have actually begun.

(Code 1985, § 19-78)

Sec. 19-140. - Inspection by city engineer.

All work done and performed in opening or excavating and refilling and repairing any street or sidewalk opened or excavated under this article shall be subject to the inspection of the city engineer or his assistants. The work shall be done in accordance with specifications to be furnished by him and shall not be considered as completed, nor shall such licensee or permittee be released from his liability to restore the street or sidewalk to the condition in which it was before such work or excavation was commenced, until its final condition is approved by the city engineer and the city council.

(Code 1985, § 19-79; Ord. No. 3730, § 5, 10-22-2007)

Sec. 19-141. - Restoration and resurfacing of streets and sidewalks.

Any street or sidewalk opened or excavated under any permit or license shall be restored to the condition in which it was before such work or excavation was commenced, by and at the expense of the person to whom such permit or license was issued. All such excavations made in permanently improved streets shall be filled and tamped preparatory to the resurfacing and shall be resurfaced by the city, under the direction of the city engineer, and such permittee or licensee shall pay the cost thereof.

(Code 1985, § 19-80)

Sec. 19-142. - Repairs made by city.

The city may, at its option, make any or all repairs to the street under this article, including the backfilling of the opening. The applicant will be charged for any work performed by the city.

(Code 1985, § 19-81)

Sec. 19-143. - Safety measures—Barricades; flags and signs; red lights.

Every person making an opening or excavation in or near any street or sidewalk shall fence or barricade the opening or excavation in accordance with standards established by the city engineer and the city department of transportation in the handbook entitled "Work Area Traffic Control Handbook" (WATCH) or any successor thereto.

(Code 1985, § 19-82)

Sec. 19-144. - Same—Walkway.

It shall be unlawful for any person, his agent, licensee, or permittee, to make any excavations in or upon any sidewalks until such person, his agent, or licensee or permittee shall have first erected or caused to be erected a suitable walkway, under the direction of the city engineer and building inspector, so as not to interfere with pedestrians or the general traveling public and, further, to protect such pedestrians or traveling public from bodily harm and danger.

(Code 1985, § 19-83)

Secs. 19-145—19-170. - Reserved.

#### ARTICLE VI. - SIDEWALKS AND DRAINAGE FACILITIES

Sec. 19-171. - Findings; purpose.

(a) The city council finds that:

- (1) Certain uses of property within the city generate significant levels of vehicular or pedestrian traffic along public streets abutting the property used for those purposes;
- (2) Convenient and safe pedestrian passageways should be provided in the public interest so as to separate such traffic in the interest of public safety;
- (3) Properties which may be used for such purposes along public streets are without adequate, convenient and safe pedestrian sidewalks; and
- (4) The provision of pedestrian passageways separated from vehicular traffic is in the interest of public safety and compliance with applicable legal requirements.

(b) The city council further finds that:

- (1) Certain uses of property generate appreciable levels of surface water runoff which in turn collects trash and litter;
- (2) Adequate drainage facilities should be provided in the public interest so as to allow the proper regulation and disposal of surface water runoff; and
- (3) Properties which may be used for such purposes along public streets are without adequate and necessary drainage facilities, such as concrete curb and gutter, catchbasins, storm drainage pipes and the like so as to control surface water runoff.

(c) Therefore, the city council, pursuant to the authority conferred by G.S. 160A-174, does ordain and enact into law this article which requires the construction of sidewalks and necessary drainage facilities in conjunction with the construction of structures, or buildings, or parking areas for certain uses.

(Code 1985, § 19-141; [Ord. No. 9322](#), § 1, 4-23-2018)

#### Sec. 19-172. - 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:

*Addition* means any new structure or building which is added to an existing building by an enclosed usable connector, such connector having the same type of heating, plumbing and utility fixtures as the existing building or structure and which does not attract or generate appreciable levels of pedestrian or vehicular traffic.

*Auxiliary building* means a detached, subordinate building, the use of which is clearly incidental and related to that of the principal structure or use of the land, which does not attract or generate appreciable levels of pedestrian or vehicular traffic and which is located on the same lot as that of the principal building or use. By way of illustration only, auxiliary buildings may include maintenance shops and lawn-care storage areas.

*Block* means the area between the intersection of two or more streets.

*Block frontage* means the frontage that abuts a publicly maintained street and that is bounded by the two nearest adjacent publicly maintained streets.

*Building* means any structure [having a roof supported by columns or walls used or intended for supporting or sheltering any use or occupancy](#)~~built for the support or enclosure of persons, goods or equipment, having a roof supported by walls.~~

*Built-upon area (BUA)* means that portion of a property that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts (activity fields that have been designed to enhance displacement of runoff, such as compaction and grading or installation of sodded turf, and underground drainage systems for public parks and schools will be considered built-upon area.) "Built-upon area" does not include a wooden slatted deck or the water area of a swimming pool.

*Collector street (class V)* means a street as described in the subdivision ordinance, chapter 20 of this Code.

[Dwelling means any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of Article III of Chapter 11 of this Code, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.](#)

[Dwelling unit means a single unit providing complete, independent living facilities for no more than one family, including permanent provisions for living, sleeping, eating, cooking and sanitation.](#)

*Industrial building* means any building whose primary function is the performance of work or labor in connection with the fabrication, assembly, processing or manufacture of products or materials.

*Necessary drainage facilities* includes such improvements as concrete curb and gutter, catchbasins, storm drainage pipes, junction boxes and such other improvements in accordance with the [City of Charlotte Land Development Standards](#) Manual ~~of Standard Details for Land Development~~, maintained by the engineering department.

*Parking area* means any area meeting the definition of "built-upon-area" and used for the storage of motor vehicles, equipment, or other items. This definition may become irrelevant in conjunction with other definitions such as "buildings."

*Permanently dead-end street* includes, but is not limited to, those city-maintained roadways which are discontinuous because of the topography, geography or other unusual land features, and the extension of such street is not expected.

*Sidewalk* means permanent all-weather pedestrian ways in accordance with the [City of Charlotte Land Development Standards](#) Manual ~~of Standard Details for Land Development~~, maintained by the engineering department.

*Structure* means anything constructed, installed, or portable, the use of which requires a location on a parcel of land. This includes a fixed or movable building which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently. "Structure" also includes, but is not limited to, swimming pools, tennis courts, signs, cisterns, sewage treatment plants, sheds, docks, mooring areas, and other accessory construction. This definition may become irrelevant in conjunction with other definitions such as "buildings."

*Thoroughfare* means all streets falling under class [I, II, III, III-C, or IV](#) as described in the [zoningsubdivision](#) ordinance, [Appendix Achapter 20](#) of this Code.

*Warehouse* means a building which is used for the storage of goods, wares or merchandise, excepting limited storage incidental to the display, sale or manufacture of such items.

(Code 1985, § 19-142; [Ord. No. 9322](#), § 1, 4-23-2018)

**Cross reference**— Definitions generally, § 1-2.

Sec. 19-173. - Required.

- (a) Except as provided in subsections (b) and (d) of this section, construction of sidewalks and necessary drainage facilities shall be required in conjunction with the construction of any new building used for any of the following purposes:
- (1) Office.
  - (2) Institutional.
  - (3) Multifamily residential where any building contains three or more dwelling units.
  - (4) Retail sales.
  - (5) Retail services.
  - (6) Business.
- (b) When the cumulative built-upon area will be less than 25 percent of the total area of the property, sidewalks and drainage facilities may not be required. However the [director/city](#) engineer may require certain improvements be made if they are determined to be in the public interest or needed to ensure public safety. If the total built-upon area of the site reaches 25 percent or more of the total area of the property, sidewalks and drainage facilities shall be required.

(c) Except as required by article III of this chapter and chapter 20 of this Code, sidewalk facilities shall not be required in conjunction with the construction of any new buildings used solely for the following purposes:

- (1) Warehouse.
- (2) Industrial.
- (3) Auxiliary building.

However, necessary drainage facilities as provided in this article shall be required except for auxiliary buildings.

(d) If the new building as referred to in subsection (a) of this section is an addition as defined in this article, the construction of sidewalk facilities shall not be required if the addition is less than 25 percent of the existing principal building or 2,500 square feet, whichever is greater, except as provided by article III of this chapter, and chapter 20 of this Code. However, necessary drainage facilities shall be required.

(e) Construction of sidewalks or necessary drainage facilities required by this article shall be accomplished along the entire length of the frontage of the property abutting each publicly maintained street, except as otherwise specified in this article.

(f) When the [director/city](#) engineer determines that future street widening and other street improvements normally required by this chapter are planned for improvement by either the city or the state department of transportation, the [director/city](#) engineer may require any combination of the following rather than exempt street improvements along such sites:

- (1) For funded projects, require the developer to pay the city the value of the street improvements for their frontage otherwise required by this chapter. Payment amounts will be determined by the [director/city](#) engineer. Payments received in this manner shall be designated to the funding source for the city project.
- (2) When the [director/city](#) engineer determines that the likelihood of future street widening and other street improvements, funded or unfunded, considered together with the expense of acquiring rights-of-way to accommodate such improvements, makes the value of the applicant's dedication to the city of additional property along the present right-of-way exceed the cost to the city of itself installing curb, gutter and/or drainage which would otherwise be required of the applicant, the [director/city](#) engineer may recommend to the city council an acceptance of dedication in lieu of street improvements. It shall be the responsibility of the applicant for such exception to request and supply information sufficient to support such an exception.

~~The city engineer's determination that grounds for such exceptions do not exist shall not be appealable.~~

(g) When the applicant's proposed plat requires approval under chapter 20 of this Code, the planning commission or city council shall have the variance powers otherwise granted the [director/city](#) engineer under section 19-176 of this article, but such power shall be exercised only after consultation with and the receipt of a recommendation from the [director/city](#) engineer.

(h) When the [director/city](#) engineer determines that the new construction is temporary and will be removed within 18 months of the date of issuance of the building permit, the [director/city](#) engineer may accept a letter of credit or bond in an amount necessary to construct the improvement otherwise required by this chapter at their estimated cost 18 months from the date of issuance of the building permit in lieu of requiring immediate installation of the improvements. If, after 18 months from the date of issuance of the building permit, the improvements have been constructed or the building has been removed from the property, the bond or letter of credit shall be returned upon request of the entity which posted it. If, after 18 months from the date of issuance of the building permit, the improvements have not been constructed and the building has not been removed from the property, the bond or letter of credit shall be forfeited to the city for construction of the improvements. It shall be the responsibility of the applicant who desires to post such bond or letter of credit in lieu of construction improvements to request and supply information sufficient to support such request.

(Code 1985, § 19-143; [Ord. No. 9322](#), § 1, 4-23-2018)

Sec. 19-174. - Standards of construction.

Sidewalks and drainage facilities shall be constructed in accordance with the construction standards set forth in the Charlotte Land Development Standards Manual (CLDSM). The requirement to construct new sidewalks, as outlined in section 19-173, shall also apply to existing segments of substandard sidewalk on thoroughfares as follows in subsections (a)—(c) below. For the purposes of interpreting subsections (a)—(c) below, "substandard sidewalk" shall be deemed to mean any sidewalk which is less than four feet in width and/or is separated from the roadway by a planting strip less than four feet in width.

- (a) Any development which meets any of the following thresholds shall be required to replace all substandard sidewalk along the property's frontage on thoroughfares with sidewalks and planting strips that meet the standards of the CLDSM.
  - (1) Development that involves new construction of a principal building;
  - (2) Development that involves the expansion of an existing principal building by 25 percent or 2,500 square feet, whichever is greater; or
  - (3) Development that involves the expansion of an existing parking area by 2,500 square feet of built upon area or more.
- (b) Any development which removes any portion or portions of substandard sidewalk along a thoroughfare, greater than 30 linear feet, during construction shall be required to replace that removed sidewalk with a sidewalk and planting strip that meets the standards of the CLDSM.
- (c) Any development which removes or damages any portion or portions of substandard sidewalk along a thoroughfare which amounts to more than 50 percent of that property's frontage width along that thoroughfare, shall be required to replace all substandard sidewalk along that property's thoroughfare frontage with a sidewalk and planting strip that meets the standards of the CLDSM.

Any sidewalk constructed or reconstructed under the requirements of this article, including curb ramps and landings, shall comply to the maximum extent feasible with the standards for accessibility included in the CLDSM and CATS Bus Stop Details.

It is not the intent of section 19-174 to reduce the developable area of a property. As such, if any sidewalk constructed or reconstructed in accordance with the requirements of section 19-174 is located outside the City of Charlotte right-of-way, that sidewalk will not count toward the calculated built upon area for the subject property. Such sidewalk must be located in an easement dedicated to the City of Charlotte for maintenance purposes.

Affordable housing projects which are required to reconstruct substandard sidewalk as a result of the requirements of section 19-174 may be eligible for reimbursement of the cost to reconstruct such sidewalk from the City of Charlotte's [Charlotte Walks Plan](#)~~Pedestrian Program in accordance with the city's sidewalk retrofit policy.~~

(Code 1985, § 19-144; [Ord. No. 9322](#), § 1, 4-23-2018)

Sec. 19-175. - Approval of plans.

Approval of sidewalk and drainage construction plans shall be obtained from the city engineering department upon application for a building permit with the county building inspection department. When sidewalk or drainage facilities are required, the city engineer will specify the locations of the required facilities. If existing public street right-of-way is not available, the ~~director/city~~ engineer may require the sidewalk to be constructed in a public easement conveyed or dedicated to the city.



(Code 1985, § 19-145)

Sec. 19-176. ~~—~~ Minor Modifications ~~Variance~~.

- (a) ~~Where~~ The requirements set forth in this article may be modified if it can be documented and confirmed by CDOT, in consultation with Planning, because of that significant topographical constraints, geography, unusual site-specific conditions related to the land, existing significant utility constraints, public safety, or mature trees designated for preservation by the city arborist or senior urban forester, or other unusual physical conditions relating to the land, strict compliance with this article shall cause an unusual and unnecessary hardship on the applicant make such improvements infeasible, the city engineer may vary the requirements set forth in this article. The director/engineer, in consultation with Planning, city engineer may also grant a modification variance if the improvements required by this article are not roughly proportional to the need for transportation improvements created by the development.
- (b) When the city director/engineer determines that the new construction is being undertaken solely to replace or restore a building destroyed by fire, flood, wind or other disaster; that the building permit will be applied for within one year of the destruction; and that such new construction will not attract or generate levels of pedestrian or vehicular traffic substantially in excess of that attracted or generated prior to such destruction, the director/city engineer may modify/vary the requirements set forth in this article. It shall be the responsibility of the applicant for the modification waiver to request and supply information sufficient to support such a modification waiver.
- (c) Every request for a modification variance of any section of this article must be submitted in writing to the director/city engineer not later than 30 days after the initial building permit is issued for the building concerned. Each request for a modification variance shall set forth in detail the grounds upon which the request is asserted and such other documents and information as the director/city engineer may require.
- ~~(d) Each request for a variance shall be acted upon by Pursuant to G.S. Sec. 160D-403, the the~~ director/engineer/city engineer shall provide written notice of his or her determination regarding the modification request to the property owner and to the party who sought the determination, if different from the property owner, by personal delivery, electronic mail, or by first-class mail, within a reasonable time, not exceeding 60 days, after receipt of a request in proper form.
- (d) In granting modifications/variances, the director/city engineer may require such conditions as will secure, insofar as practicable, the objectives of this article.

(Code 1985, § 19-146; Ord. No. 9322, § 1, 4-23-2018)

Sec. 19-177. - Notice and appeal.

- ~~(a) If the property owner or the party seeking the modification any party~~ is dissatisfied with the director/engineer's a determination/cision of the city engineer regarding the modification variance request made pursuant to section 19-176, such party may request a hearing within thirty (30) ten working days from of the receipt of such decision. Any other person with standing to appeal has thirty (30) days from receipt from the source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. Sec. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. The request must be in writing and directed to the city manager who shall hear the appeal of the party concerned. In determining appeals of administrative decisions and variances of this article, the city manager or his or her designee shall follow the statutory procedures for all quasi-judicial decisions as required by G.S. Sec. 160D-406. The city manager or his designee may grant a variance from the requirements of this article upon a finding that:

- 1) ~~(4)~~ Unnecessary hardship would result from the strict application of the regulation. It is not

necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

a. Practical difficulties or unnecessary hardship would result if the strict letter of the law were followed; and

b. The variance is in accordance with the general purpose and intent of this chapter. Variance approvals attach to and run with the land pursuant to G.S. Sec. 160D-104.

Unnecessary hardship would result if the strict letter of the law were followed; and

(2) The variance to be granted by the city manager is in accordance with the general purpose and intent of this article.

(b) After a full and complete hearing held within 30 days of receipt of the request, the city manager or his designee shall render his written opinion within ten working days either affirming, overruling or modifying the decision of the city engineer as may be fit and proper under the circumstances. The decision of the city manager or his designee shall not be appealable.

(Code 1985, § 19-147)

Sec. 19-178. - Occupancy of any building in violation of article.

It shall be unlawful for any person to occupy or allow the occupancy or use of any building which is in violation of this article.

(Code 1985, § 19-148)

Sec. 19-179. - Enforcement.

- (a) Any person who causes or allows or engages in the construction, occupancy or use of any building in violation of this article shall, upon conviction, be guilty of a misdemeanor and shall be subject to punishment as provided in section 2-21 of this Code. Each day that a violation continues to exist shall be considered to be a separate offense, provided the violation is not corrected within 30 days after initial notice of the violation has been given.
- (b) Any person who causes or allows or engages in the construction, occupancy or use of any building in violation of this article shall be subject to a civil penalty of \$100.00. Each day that the violation continues shall subject the offender to an additional penalty of \$100.00, provided the violation is not corrected within 30 days after the notice of the violation is given.
- (c) Neither this article nor any of its sections shall be construed to impair or limit in any way the power of the city to define and declare nuisances and cause their abatement through summary action or otherwise. This article may be enforced by any and every method provided pursuant to G.S. 160A-175.

(Code 1985, § 19-149)

Secs. 19-180—19-205. - Reserved.

ARTICLE VII. - DECORATIVE SIGNS<sup>5</sup>

Footnotes:

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**Editor's note**— Ord. No. 4687, § 1, adopted June 27, 2011, amended article VII in its entirety to read as herein set out. Formerly, article VII pertained to decorative signs in municipal service districts 1, 2 and 3, and derived from the Code of 1985, §§ 19-161(a)—(g).

Sec. 19-206. - 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:

*Decorative sign* means a pictorial representation, including illustrations, words, numbers, or decorations; emblem; flag; banner; pennant, that promotes or celebrates the city, its neighborhoods, civic institutions, or public activities or events in the city. Decorative signs may either be designed and displayed by the city directly, or may be donated to the city on a permanent basis or for a limited period of time.

(Ord. No. 4687, § 1, 6-27-2011)

**Cross reference**— Definitions generally, § 1-2.

Sec. 19-207. - Purpose.

This article is intended to provide for temporary and permanent decorative signs within public rights-of-way and to exempt such signs from the provisions contained in the zoning ordinance in appendix A to this Code. Decorative signs are regulated in accordance with these standards in order to:

- (1) Make it clear that decorative signs under this article constitute government speech and that the city does not intend to create a public forum for private speech;
- (2) Provide standards and guidelines regarding the donation and display of banners, flags, pennants and other decorative and informative signs on public rights-of-way;
- (3) Restrict the display of decorative signs which:
  - a. Overloads the public's capacity to receive information;
  - b. Violate privacy; or
  - c. Increases the probability of accidents by distracting attention or obstructing vision;
- (4) Establish guidelines which include, but are not limited to, size, materials, location, erection and removal of decorative signs.

(Ord. No. 4687, § 1, 6-27-2011)

Sec. 19-208. - Prohibited sign devices.

No decorative sign may be lighted, may flash, or may make noise.

(Ord. No. 4687, § 1, 6-27-2011)

Sec. 19-209. - Location, size, and placement of signs.

- (a) Decorative signs are permitted to be displayed upon public street frontages provided signs:
  - (1) Do not impede vehicular visibility;
  - (2) Do not obstruct regular building signs;
  - (3) Do not interfere with the display of windows on private property; and
  - (4) Otherwise comply with the applicable sections of this Code and provisions contained in this policy.
- (b) When donated signs are placed on, in, or above public rights-of-way, written consent of the director/engineer shall be required. Such consent shall be based on a review that will include, but not be limited to, sign design, location, placement, and safety.
- (c) Decorative signs placed on property other than the city's (e.g., utility poles, pedestrian and railroad bridges) shall require the written consent of the property owner.

(Ord. No. 4687, § 1, 6-27-2011)

Sec. 19-210. - Erection and removal of signs.

For donated signs, erection and removal of a decorative sign is the responsibility of the donor, and all costs must be borne by the donor or charged to the donor by the city, if the decorative sign is not removed within the prescribed time, and the city itself must remove the sign. The erection or removal of decorative signs that requires the closure of any street, travel lane, or sidewalk area requires prior approval by the city's department of transportation. All such closures must conform to the current edition of the department of transportation's Work Area Traffic Control Handbook (WATCH).

(Ord. No. 4687, § 1, 6-27-2011)

Sec. 19-211. - Insurance; liability.

Any person or organization donating, installing, displaying, or dismantling decorative signs pursuant to this article shall save and hold harmless the city from any and all liability or damage to any person or property caused or occasioned by such process. Those installing, displaying, or dismantling signs must obtain and provide evidence to the city's department of transportation of comprehensive general liability insurance with limits established by the city's risk management division per occurrence, annual aggregate on bodily injury and property damage to insure their liability. Such policy shall indemnify the city as provided in this subsection. A certificate of insurance shall be issued prior to the beginning of any work. The certificate of insurance shall be furnished to the city containing the provision that 30 days' written notice will be given to the city prior to cancellation or change to the required coverages and that failure to provide such notice shall impose an obligation and liability upon the issuing company, its agents, or representatives.

(Ord. No. 4687, § 1, 6-27-2011)

Sec. 19-212. - Administration.

The director/engineer shall promulgate policies and guidelines governing the approval and display of decorative signs to ensure that signs appropriately promote or celebrate the city, its neighborhoods, civic institutions, or public activities or events in the city, and to protect public safety and welfare, including

ensuring against hazards, traffic problems, and visual blight. Such policies and guidelines shall include, but are not limited to specifications as to the number, size, materials, printing processes, supporting structures, and hanging and removal. The director/engineer shall have the authority to waive specific rules when (1) the decorative sign substantially complies with the rules; and (2) the director/engineer determines that the waiver will not have any adverse effect on public safety and welfare. No decorative sign may be displayed without the prior approval of the director/engineer.

(Ord. No. 4687, § 1, 6-27-2011)

Sec. 19-213. - Unlawful acts.

It shall be unlawful for anyone to place or cause to be placed a decorative sign within public rights-of-way without complying with the following:

- (1) This article;
- (2) The policies and guidelines for the display and approval of decorative [signs](#); and
- (3) Any other requirements or conditions stated in a written approval for a decorative sign.

(Ord. No. 4687, § 1, 6-27-2011)

Secs. 19-214—19-240. - Reserved.

#### ARTICLE VIII. - OBSTRUCTIONS AND ENCROACHMENTS

Sec. 19-241. - Obstructions.

It shall be unlawful to place or maintain an unnecessary obstruction in the public right-of-way. The city may require the person who has placed or maintains an obstruction in violation of this section to remove the obstruction and repair or restore the right-of-way within a reasonable period of time, which time shall be set in consideration of the harm or risk created by the obstruction and the effort and expense of removal. In addition, the city may summarily remove an obstruction and charge the expense of the removal, restoration, and repair to the person who placed or maintained the obstruction.

(Code 1985, § 19-25(a))

Sec. 19-242. - Encroachment agreements.

It shall be unlawful to place or maintain a fixed object in the public right-of-way without first obtaining an encroachment agreement from the city, unless the placement or maintenance of the fixed object has been approved through a separate city permitting process. This section shall not apply to the placement and maintenance of mailboxes and utility facilities.

Sec. 19-243. - Certificate to builder; penalty for building without certificate.

Any person building or about to build any house, building, fence or wall or construct any sidewalk or pavement along the border or bounding on any of the city streets or sidewalks shall have such located and graded and the boundaries thereof adjoining such street fixed and certified to by the director/engineer. A fence or wall described in this section shall not exceed height restrictions as provided in the zoning ordinance in appendix A to this Code or within required sight distance triangles at intersections as provided in section 19-245. It shall be unlawful to build or maintain a house, building, fence, wall, sidewalk or pavement in violation of this section.

(Code 1985, § 19-4)

Sec. 19-244. - Grates on sidewalks.

It shall be unlawful for any person to erect or maintain an open grate or vault door in a sidewalk or right-of-way without first obtaining approval of the city council upon recommendation of the director/engineer. This section shall not apply to utility manhole and handhold covers.

(Code 1985, §§ 19-16, 19-19)

Sec. 19-245. - Obstructions to cross visibility at intersections deemed nuisance; abatement procedures.

- (a) In order to promote and conserve the public health and safety and pursuant to the police powers of the city and the power to prevent and abate public nuisances as conferred upon the city by state law, it is hereby declared to be a public nuisance for a person owning and/or having the legal control of any land within the corporate limits to maintain or permit upon any such land any fence, sign, billboard, shrubbery, bush, tree, mailbox or other object, or any combination thereof, which obstructs the view of motorists using any street or the approach to any street intersection so as to constitute a traffic hazard or a condition dangerous to the public safety.
- (b) The restrictions set forth in this section shall apply to both of the following triangles of land:
  - (1) That triangle bounded by the curb edges, or edges of pavement where there is no curb, measured along the curb edge, or edge of pavement where there is no curb, 50 feet from the midpoint of the radius of the curb edge, or edge of pavement where there is no curb, in each direction and the diagonal line connecting the further ends of such 50-foot lengths; and
  - (2) That triangle bounded by the right-of-way lines measured 35 feet from the point of their intersection in each direction and the diagonal line connecting the further ends of such 35-foot lengths.
- (c) Within such triangles, and except as provided in subsection (d) of this section, it shall be unlawful to install, set out or maintain, or allow the installation, setting out, or maintenance of, any sign, hedge, shrubbery, tree, natural growth, earthen berm, or other object of any kind which obstructs cross visibility at a level between 30 inches and 72 inches above the level of the center of the adjacent intersection.
- (d) Subsection (c) of this section shall not apply to the following:
  - (1) Permanent buildings.
  - (2) Existing natural grades that, by reason of natural topography, rise 30 or more inches above the level of the center of the adjacent intersection.
  - (3) Trees having limbs and foliage trimmed in such manner that no limbs or foliage extend into the area between 30 inches and 72 inches above the level of the center of the adjacent intersection.
  - (4) Fire hydrants, public utility poles, street markers, governmental signs, and traffic control devices.
- (e) Where compliance with this section in the described triangles or at the heights described alone is insufficient to prevent a dangerous condition, the transportation director may designate further measures which must be taken by the owner or other responsible person to eliminate such dangerous condition. Such measures shall be designed to provide an adequate sight and stopping distance for persons approaching the intersection at prevailing speeds and may include the removal of obstructions at different heights or in areas outside the triangles established in subsection (b) of this section.
- (f) If the provisions of any other law, ordinance or regulation of the city or of the state shall be in conflict with this section, the more stringent provision shall control.

- (g) The administration of this section shall be under the direction of the transportation director who shall investigate violations, issue such notices and orders as are required in this section, and perform such other duties as may be necessary to the enforcement of this section.
- (h) Any obstruction to cross visibility maintained in violation of this section shall be deemed to be a public nuisance inconsistent with and detrimental to the public safety and shall be abated in accordance with the following procedure:
  - (1) The transportation director shall cause to be served by certified mail a written notice and order of abatement upon the owner, tenant and/or person having legal control of the premises upon which such obstruction exists.
  - (2) Such obstruction shall be removed within ten days from the date of receipt of such notice and order.
  - (3) Any person receiving such notice and order may, within ten days from receipt thereof, request, in writing, a hearing before the city manager or his designee. If any person receiving such notice and order does not comply with the order and does not request, in writing, a hearing before the city manager or his designee within the ten-day period, the transportation director may request, in writing, that the city manager or his designee fix the date of the hearing and notify the person upon whom the notice and order have been served of the time and place of such hearing. If, after such hearing, the city manager or his designee finds that the obstruction in question does in fact constitute a public nuisance, the city manager or his designee shall order that such nuisance be abated within ten days from the date of such order. Upon failure by any person to comply with such order of the city manager or his designee, the transportation director shall cause the removal of such obstruction by city forces and/or an independent contractor. The cost of such removal shall be billed to the owner and/or person having legal control of the land. If unpaid for more than 30 days, such cost shall become a lien against the property from which such obstruction is removed. The transportation director shall have authority to file the lien on the public records of the county and to cancel the lien when paid.
- (i) In addition to the other remedies provided in this section, the city shall be entitled to seek a judicial injunction and order of abatement or other equitable remedy to secure the enforcement of this section, regardless of whether the city manager has held or been requested to hold a hearing or the city manager or city council has declared the condition a nuisance.

(Code 1985, § 19-16)

Secs. 19-246—19-270. - Reserved.

#### ARTICLE IX. - SIDEWALK DINING<sup>[6]</sup>

Footnotes:

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**Cross reference**— Businesses and trades, ch. 6; licenses, ch. 13.

Sec. 19-271. - Permits generally.

The director of transportation or his designee may enter into encroachment agreements for the serving of food and beverages on city sidewalks on the following conditions:

- (1) Dining is for waiter service only;

- (2) No permanent fixtures, facilities or encroachments are affixed to the sidewalk or installed within the city right-of-way;
- (3) A cover charge is not charged for sidewalk dining;
- (4) No business, product, or advertising signing is placed on any encroaching item; and
- (5) The sidewalk is free from litter, food products and other items.

(Code 1985, § 19-24(a))

Sec. 19-272. - 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:

*Permanent encroachment* means all items of privately owned personalty affixed, connected, attached or fastened to any public sidewalk or right-of-way.

*Restaurant* means an establishment in the business of regularly and customarily selling food, primarily to be eaten on the premises, including businesses that are referred to as "restaurants," "cafeterias," "cafes," "lunchstands," "grills," "snack bars," "fast food businesses" and other establishments, such as drugstores, which have a lunchcounter or other section where food is sold to be eaten on the premises. This definition does not include food vendors.

*Restaurant operator* means the person operating a restaurant and associated sidewalk cafe. As used in this article, this definition includes the owner and manager, if different from the owner, of the restaurant and associated sidewalk cafe.

*Temporary encroachment* means all items of privately owned personalty situated on, but not affixed, connected, attached or fastened to, any sidewalk or public right-of-way.

(Code 1985, § 19-24(b))

**Cross reference**— Definitions generally, § 1-2.

Sec. 19-273. - Encroachment agreement.

Any restaurant operator who desires to offer sidewalk dining shall execute an encroachment agreement with the city, which agreement shall contain, but not be limited to, the following:

- (1) The name, address, and telephone number of the restaurant desiring to operate sidewalk dining.
- (2) The name, address, and telephone number of the restaurant operator.
- (3) The type of food and beverage, or food product, to be sold and served for the sidewalk dining.
- (4) The hours of operation of the restaurant and the proposed hours of operation of sidewalk dining.
- (5) A scaled drawing or site plan showing the following:
  - a. The section of sidewalk or right-of-way to be used for the dining.
  - b. The section to be kept clear for pedestrian use.
  - c. The existing curblin and right-of-way line.
  - d. The proposed placement of the tables, chairs and other furnishings on the sidewalk.
- (6) Evidence of adequate insurance, as determined by the city, to hold the city harmless from claims arising out of the operation of the sidewalk dining.



- (7) An indemnity statement whereby the restaurant operator agrees to indemnify and hold harmless the city and its officers, agents, and employees from any claim arising from the operation of the sidewalk dining.
- (8) A copy of all permits and licenses issued by the state, county or city, including health and ABC permits, if any, necessary for the operation of the restaurant or business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the city for exterior alterations or improvements to the restaurant.
- (9) Such additional information as may be requested by the director of transportation or his designee to determine compliance with this article.
- (10) A fee as determined by the city to cover the cost of processing and investigating the application and issuing the permit.

(Code 1985, § 19-24(c))

Sec. 19-274. - Issuance of encroachment agreement.

An encroachment agreement for the operation of sidewalk dining may not be issued unless the agreement is complete and unless the following requirements are met:

- (1) Sidewalk dining must be associated with an operating restaurant such that it is under the same management and shares the same food preparation facilities, restroom facilities and other customer convenience facilities as the restaurant.
- (2) Sidewalk dining must be clearly incidental to the associated restaurant business. Seating capacity of sidewalk dining may not constitute more than 50 percent of the total seating capacity of the associated restaurant.
- (3) The placement of tables, chairs and other furnishings as shown in the drawing required in section 19-273(5) must be done in such a manner that at least six feet of unobstructed paved space, as measured from the street-side edge of the sidewalk, remains on the sidewalk for the passage of pedestrians in the uptown mixed use and neighborhood services zoning districts and at least five feet of unobstructed paved space in all other zoning districts.
- (4) The restaurant seeking approval for sidewalk dining must front on and open onto the sidewalk proposed for the sidewalk dining. The placement of tables, chairs, and other furnishings may not extend beyond the sidewalk frontage of the associated restaurant unless as provided in section 19-275(5) and (6) of this article.
- (5) The tables, chairs, and other furnishings used in sidewalk dining shall be removed daily from the sidewalk at the close of the associated restaurant's business day.
- (6) The operation or furnishings associated with sidewalk dining shall not result in any permanent alteration to or encroachment upon any street, sidewalk, or to the exterior of the associated restaurant.

(Code 1985, § 19-24(d))

Sec. 19-275. - Placement of furnishings.

Furnishings for sidewalk dining:

- (1) Shall not be within ten feet of any driveway or alleyway;
- (2) Shall not be within 15 feet of a fire hydrant or standpipe;
- (3) Shall not be within ten feet of a crosswalk or the intersection of right-of-way lines (property lines) at a street intersection;

- (4) Shall not be at any location which obstructs underground utility access points, ventilation areas, meters, accessible ramps or other facilities provided for physically challenged persons, a building access or exit, or any emergency access or exitway;
- (5) Shall not be in front of an adjacent property, without the written approval of the adjacent business or property owner;
- (6) Shall not be in front of an adjacent display window, without the written approval of the business or property owner; and
- (7) Shall have other conditions that may be necessary as determined by the director of transportation.

(Code 1985, § 19-24(e))

Sec. 19-276. - Denial/revocation of encroachment agreement.

The director of transportation or his designee may deny or revoke an encroachment agreement, pursuant to this article, if he finds that the granting or continuation of the agreement would not be in the public's interest or if he finds that the restaurant operator has:

- (1) Made a deliberate misrepresentation or provided false information in the encroachment agreement;
- (2) Operated sidewalk dining at the location in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare, specifically to include failure to keep the sidewalk clean and free of refuse;
- (3) Failed to maintain any health, business or other permit or license required by law for the operation of the restaurant business; or
- (4) Failed to uphold the terms of the encroachment agreement.

(Code 1985, § 19-24(f))

Sec. 19-277. - Reservation of rights.

The city reserves the right to cease part or all of any sidewalk dining pursuant to this article in order to allow construction, maintenance, or repair of any street, sidewalk, utility, or public building, by the city, its agents or employees or by any governmental entity or public utility, and to allow for the use of the street or sidewalk in connection with parades, civic festivals, and other events of a temporary nature, as permitted by the city. The city also reserves the right to amend, alter, or change the encroachment agreement upon further review and consideration for reasons of public safety, adopted public policy, or operational concerns without any costs to the city. In such event, the director of the department of transportation will notify the restaurant operator by certified mail of amendments to the agreement. These amendments will require an execution of a new agreement within the time period specified in the notice. Failure to enter into a new encroachment agreement pursuant to this section will result in automatic termination of the agreement.

(Code 1985, § 19-24(g))

Sec. 19-278. - Term and transfer of encroachment agreements.

- (a) Agreements issued in accordance with this article shall remain in effect for a period of one year. If modifications of the original drawing or site plan as required in section 19-273(5) are desired, a new drawing must be submitted and approved by the director of transportation or his designee before another agreement may be approved.

(b) Encroachment agreements entered into pursuant to this article shall not be transferable or assignable.

(Code 1985, § 19-24(h))

Secs. 19-279—19-300. - Reserved.

#### ARTICLE X. - PICKETING<sup>[7]</sup>

Footnotes:

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**Editor's note**— Ord. No. 2621, § 1, adopted June 14, 2004, amended article X in its entirety to read as herein set out. Formerly, article X pertained to parades and derived from Ord. No. 2459, § 1, adopted December 8, 2003. For provisions pertaining to parades, the user's attention is directed to article XI.

#### Sec. 19-301. - 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:

*Picket or picketing* means to make a public display or demonstration of sentiment for or against a person or cause, including protesting which may include the distribution of leaflets or handbills, the display of signs and any oral communication or speech, which may involve an effort to persuade or influence, including all expressive and symbolic conduct, whether active or passive.

*Sidewalk* means that portion of the street right-of-way which is designated for the use of pedestrians and may be paved or unpaved and shall include easements and rights of ways.

*Street* means the entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter or right, for the purposes of vehicular traffic, including that portion that is known as the shoulder of the roadway and the curb. The terms "highway" and "street" and their cognates are synonymous as used herein.

(Ord. No. 2621, § 1, 6-14-2004)

#### Sec. 19-302. - Notice of intent to picket.

(a) *Notification required.* The organizer of a picket that the organizer knows, or should reasonably know will be by a group of 50 or more individuals shall give notice of intent to picket to the chief of police or designee at least 48 hours before the beginning of the picket. The notice of intent to picket shall include the following information:

- (1) The name, address and contact telephone number for the organizer of the picket;
- (2) The name, address and contact telephone number of the person giving notice of intent to picket if different from the organizer;
- (3) The name of the organization or group sponsoring the picket;
- (4) The location where the picket is to take place;
- (5) The date and time the picket will begin and end; and
- (6) The anticipated number of participants, and the basis on which this estimate is made.

- (b) *Receipt of notification.* Upon notice of intent to picket given in accordance with subsection (a), the chief of police or designee shall immediately issue a receipt of notice. The receipt shall contain all information stated in the notice. The organizer of a picket shall be responsible for maintaining the receipt, and shall present it when so requested by a law enforcement officer or other city official.
- (c) It shall be unlawful for any person to violate any provision of this section.

(Ord. No. 2621, § 1, 6-14-2004)

Sec. 19-303. - Picketing regulations.

- (a) Picketing may be conducted on public sidewalks, at the Old City Hall lawn, the Charlotte-Mecklenburg Government Center plaza, Polk Park, Independence Square Plaza, Arequipa Park, any other city-controlled park, or other city-owned areas normally used or reserved for pedestrian movement, including easements and rights-of-way, and shall not be conducted on the portion of the public roadway used primarily for vehicular traffic.
- (b) Notwithstanding subsection (a), picketing may not be conducted:
  - (1) On a median strip; or
  - (2) At a location directed, focused, or targeted at a particular private residence.
- (c) Picketing shall not disrupt, block, obstruct or interfere with pedestrian or vehicular traffic or the free passage of pedestrian or vehicular traffic into any driveway, pedestrian entrance, or other access to buildings, which abut the public sidewalks.
- (d) Written or printed placards or signs, flags, or banners carried by individuals engaged in picketing shall be of such a size and/or carried on the sidewalks or other city-owned areas, as to allow safe and unobstructed passage of pedestrian or vehicular traffic. The staff or pole on which a sign, flag, or banner may be carried shall be made of corrugated material, plastic, or wood, and shall not exceed 40 inches in length and shall not be made of metal or metal alloy. If made of wood, the staff or pole shall be no greater than three-fourths inch in diameter at any point. A staff or pole must be blunt at both ends.
- (e) If more than one group of picketers desire to picket at the same time at or near the same location, law enforcement officers may, without regard to the purpose or content of the message, assign each group a place to picket in order to preserve the public peace. Members of a group shall not enter an area assigned to another group. Priority of location shall be based upon which group of picketers arrived first.
- (f) Spectators of pickets shall not physically interfere with individuals engaged in picketing. Picketers and spectators of pickets shall not speak fighting words or threats that would tend to provoke a reasonable person to a breach of the peace.
- (g) Picketers and picketing shall be subject to all applicable local, state and federal laws including, but not limited to:
  - (1) The city's noise ordinance;
  - (2) The city's handbill ordinance;
  - (3) G.S. § 14-225.1 (obstructing justice);
  - (4) G.S. § 14-277.2 (weapons);
  - (5) G.S. § 14-277.4 (health care facilities); and
  - (6) G.S. § 14-288.4 (disorderly conduct).
- (h) Nothing in this section prohibits a law enforcement officer from issuing a command to disperse in accordance with North Carolina General Statute § 14-288.5 in the event of a riot or disorderly conduct by an assemblage of three or more persons.

(i) It shall be unlawful for any person to violate any provision of this section.

(Ord. No. 2621, § 1, 6-14-2004; Ord. No. 4815, § 1, 1-23-2012)

Secs. 19-304—19-310. - Reserved.

#### ARTICLE XI. - PUBLIC ASSEMBLIES AND PARADES<sup>[8]</sup>

Footnotes:

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**Editor's note**— See note at article X.

Sec. 19-311. - 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:

*Appeals official* means the city manager, or his designee who shall be a deputy or assistant city manager.

*Demonstration* means a public display of sentiment for or against a person or cause, including protesting.

*Festival* means an outdoor concert, fair, community event, or similar event that is primarily commercial and/or recreational in nature.

*Parade* means an athletic event, march, procession or other similar activity consisting of persons, animals, vehicles or things, or any combination thereof, that disrupts the normal flow of traffic upon any public street. A funeral procession is not a parade.

*Permit official* means the person or persons designated by the city manager as being responsible for issuing and revoking permits under this article. The city manager may designate different persons as the permit official for different categories of permitted events and for different facilities or locations.

*Public assembly* means:

- (1) A festival or demonstration which is reasonably anticipated to obstruct the normal flow of traffic upon any public street and that is collected together in one place; and
- (2) A festival on the Old City Hall lawn, the Charlotte-Mecklenburg Government Center Plaza, or in Polk Park, Independence Square Plaza, Arequpa Park or any other city-controlled park.

(Ord. No. 2621, § 2, 6-14-2004; Ord. No. 4815, § 2, 1-23-2012)

Sec. 19-312. - Public assembly and parade permits.

- (a) *Permit required.* No public assembly or parade is permitted unless a permit allowing such activity has been obtained, and remains unrevoked, pursuant to this section.
- (b) *Permit application.* An application for a public assembly or parade permit shall be made in writing on a form prescribed by the Permit official at least 30 days before the commencement of the event. Notwithstanding the preceding sentence, the permit official shall consider an application that is filed less than 30 days before the commencement of the proposed event where the purpose of such event is a spontaneous response to a current event, or where other good and compelling causes are shown.

The application must contain the following:

- (1) The name, address, and telephone number for the person in charge of the proposed event and the name of the organization with which that person is affiliated or on whose behalf the person is applying (collectively "applicant");
  - (2) The name, address, and telephone number for an individual who shall be designated as the responsible planner and on-site manager for the event;
  - (3) The date, time, place, and route of the proposed event, including the location and time that the event will begin to assemble and disband, and any requested street closings;
  - (4) The anticipated number of persons and vehicles, and the basis on which this estimate is made;
  - (5) A list of the number and type of animals that will be at the event and all necessary health certificates for such animals;
  - (6) Such other information, attachments, and submissions that are requested on the application form; and
  - (7) Payment of a nonrefundable application fee established pursuant to section 2-4 of this Code.
- (c) *Permitting criteria.* An application may be denied or revoked for any of the following reasons:
- (1) The application is not fully completed and executed;
  - (2) The applicant has not tendered the required application fee or has not tendered other required user fees, indemnification agreements, insurance certificates, or security deposits within times prescribed;
  - (3) The application contains a material falsehood or misrepresentation;
  - (4) The applicant is legally incompetent to contract or to sue and be sued;
  - (5) The applicant has on prior occasions made material misrepresentations regarding the nature or scope of an event;
  - (6) The applicant has previously permitted a violation or has violated the terms of a public assembly or parade permit issued to or on behalf of the applicant;
  - (7) The applicant has on prior occasions damaged city property and has not paid in full for such damage;
  - (8) A fully executed prior application for the same time and place has been received, and a permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple simultaneous events;
  - (9) The proposed event would conflict with previously planned programs organized, conducted, or sponsored by the city and previously scheduled at or near the same time and place;
  - (10) The proposed event would present an unreasonable danger to the public health or safety;
  - (11) The proposed event would substantially or unnecessarily interfere with traffic;
  - (12) The event would likely interfere with the movement of emergency equipment and police protection in areas contiguous or in the vicinity of the event.
  - (13) There would not, at the time of the event, be sufficient law enforcement and traffic control officers to adequately protect participants and non-participants from traffic related hazards in light of the other demands for police protection at the time of the proposed event;
  - (14) The applicant has not complied or cannot comply with applicable licensure requirements, ordinances or regulations concerning the sale or offering for sale of any goods or services;
  - (15) The use or activity intended by the applicant is prohibited by law;

- (16) For non-First Amendment protected public assemblies or parades, the following criteria shall also apply:
- a. The cultural and/or educational significance of the event;
  - b. The extent to which the event contributes to the economic revitalization and business development of the city;
  - c. The impact and/or cost of the event to city support services;
  - d. The impact of the event to the public health, safety and welfare;
  - e. The impact of the event on business and resident populations within or adjacent to the proposed event site;
  - f. The evaluation of any previous event produced by the event organizer with regard to planning, quality, public safety, and payment of invoices;
  - g. The frequency and timing of the event or similar events.

Unless subject to (c)(16), noting in this section shall authorize the permit official to deny or revoke a permit based upon political, social, or religious grounds or reasons, or based upon the content of the views expressed.

The permit official may attach reasonable conditions to any permit approval.

- (d) *Costs and fees.* The applicant shall be responsible for hiring and paying off-duty law enforcement officers, or reimbursing the city for the costs of providing on-duty law enforcement officers, to appropriately police street closures. For festivals, the applicant shall be additionally responsible for hiring and paying off-duty law enforcement officers and fire/EMS personnel, or reimbursing the city for the costs of providing on-duty law enforcement officers and fire/EMS personnel, to provide internal festival safety and security.

The permit official, in consultation with the Charlotte-Mecklenburg police and fire departments, shall determine the number of officers and fire/EMS personnel needed to appropriately police street closures and for internal safety and security, and the time when such services shall commence and end, taking into consideration the following:

- (1) The proposed location of the special event or route of the parade;
- (2) The time of day that the public assembly or parade is to take place;
- (3) The date and day of the week proposed;
- (4) The general traffic conditions in the area requested, both vehicular and pedestrian. Special attention is given to the rerouting of the vehicles or pedestrians normally using the requested area;
- (5) The number of marked and unmarked intersections along the route requested, together with the traffic control devices present;
- (6) If traffic must be completely rerouted from the area, then the number of marked and unmarked intersections and the traffic control devices are to be taken into consideration;
- (7) The estimated number of participants;
- (8) The estimated number of viewers;
- (9) The nature, composition, format and configuration of the special event or parade;
- (10) The anticipated weather conditions;
- (11) The estimated time for the special event or parade;
- (12) For festivals, whether alcohol will be served, live music offered, or retail sales stations provided, and the number and location of alcohol service stands, music stages, and retail stands.

In addition, for festivals located inside I-277, the applicant shall reimburse the city for the costs of providing street and sidewalk cleaning, trash receptacle placement, trash removal, and trash disposal.

Notwithstanding the foregoing, the city may provide the services required by this subsection at no cost, or at a reduced cost, to the applicant should the city desire to provide such support to the public assembly or parade. Such action is not a waiver of a regulatory requirement based upon political, social, or religious grounds or reasons, or based upon the content of the views expressed, but instead is an affirmative act of city association or speech.

- (e) *Time and notice of decision.* The permit official shall approve or deny an application within 20 days of receipt. A notice of denial or revocation shall clearly set forth the grounds upon which the permit was denied or revoked and, where feasible, shall contain a proposal for measures by which the applicant may cure any defects in the application or otherwise procure a permit. Where an application is denied because the proposed event would conflict with another event that has or will be approved, the permit official shall propose an alternative place, if available for the same time, or an alternative time, if available for the same place.
- (f) *Appeals.*
  - (1) An applicant may appeal the denial or revocation of an application in writing within ten days after notice of the denial has been received. Within five business days, or such longer period of time agreed to by the applicant, the appeals official shall hold a quasi-judicial hearing on whether to issue the permit or uphold the denial or revocation. The applicant shall have the right to present evidence at said hearing. The decision to issue or uphold the denial or revocation shall be based solely on the approval criteria set forth in this section. The appeals official shall render a decision on the appeal within five business days after the date of the hearing. In the event that the purpose of the proposed event is a spontaneous response to a current event, or where other good and compelling causes are shown, the appeals official shall reasonably attempt to conduct the hearing and render a decision on the appeal as expeditiously as is practicable.
  - (2) The decision of the appeals official is subject to review in the Superior Court of Mecklenburg County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after the applicant has received notice of the decision. Unless good cause exists to contest a petition for writ of certiorari, the city shall stipulate to certiorari no later than five business days after the petitioner requests such a stipulation. The city shall transmit the record to the court no later than five business days after receiving the order allowing certiorari. Notwithstanding the provisions of any local rule of the reviewing court that allows for a longer time period, the city shall file its brief within 15 days after it is served with the petitioner's brief. If the petitioner serves his or her brief by mail, the city shall add three days to this time limit, in accordance with North Carolina General Statute 1A-1, Rule 5. If the local rule is subsequently amended to provide for a shorter time period for the filing of any brief, then the shorter time period shall control. The North Carolina Rules of Appellate Procedure shall govern an appeal by an applicant from the Superior Court of Mecklenburg County.
- (g) It shall be unlawful for any person to violate any provision of this section or to violate any term or condition of a permit issued pursuant to this section.

(Ord. No. 2621, § 2, 6-14-2004; Ord. No. 4815, § 3, 1-23-2012)

Sec. 19-313. - Public assembly and parade regulations.

- (a) It shall be unlawful to unreasonably hamper, obstruct, impede, or interfere with a public assembly or parade, or with any person, vehicle, or animal participating or used in the public assembly or parade.
- (b) It shall be unlawful for the operator of a motor vehicle to drive between vehicles or persons comprising a parade when such vehicles or persons are in motion and are conspicuously designated as a parade.



- (c) Spectators of a public assembly or parade and persons attending or participating in a public assembly or parade picketing shall be subject to all applicable local, state and federal laws including, but not limited to G.S. § 14-277.2 (weapons).
- (d) Nothing in this section prohibits a law enforcement officer from issuing a command to disperse in accordance with North Carolina General Statute § 14-288.5 in the event of a riot or disorderly conduct by an assemblage of three or more persons.

(Ord. No. 2621, § 2, 6-14-2004)

Secs. 19-314—19-320. - Reserved.

## ARTICLE XII. - VALET PARKING

### Sec. 19-321. - Definitions.

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

*Valet operator* means:

- (1) A person whose business is served by valet parking service;
- (2) A person who provides valet parking service and
- (3) Any employee or agent of a person described in (1) or (2) who provides, or participates in the provision of, valet parking service.

For purposes of this article, valet operator shall not mean the city or a person acting on behalf of the city.

*Valet parking service* means accepting possession of a vehicle on the right-of-way for the purpose of parking the vehicle for the operator or retrieving a parked vehicle and returning it to the operator on the right-of-way, regardless of whether a fee is charged.

(Ord. No. 3360, § 1, 8-28-2006)

### Sec. 19-322. - Permits.

- (a) *Permit required.* No valet parking service is permitted unless a permit allowing such activity has been issued pursuant to this section.
- (b) *Permit application.* An application for a valet parking permit shall be made in writing on a form prescribed by the director/engineer. The application must contain the following:
  - (1) The name, address, and telephone number of the business to be served by the valet parking service and, if separate from the business to be served, the owner/operator of the valet parking service;
  - (2) A written justification of the need for valet parking service by the business to be served;
  - (3) A scale drawing of the location and limits of the proposed valet parking service activities, including an identification of any on-street parking spaces or loading zones that would be affected by the activities;
  - (4) An operation plan that includes the days and times when valet parking services will be provided;
  - (5) An indemnity and release form as prescribed by the director/engineer;
  - (6) Proof of insurance as required by the director/engineer;

- (7) Any other information reasonably required by the director/engineer; and
- (8) Payment of a non-refundable application fee established pursuant to section 2-1.

The permit application requirements of this section shall also apply to permit renewals.

- (c) *Permitting criteria.* The director/engineer shall issue or deny a valet parking permit taking into consideration the following factors:

- (1) Whether the application is complete;
- (2) The extent to which the valet parking service might unreasonably disrupt the flow of pedestrian and vehicular traffic, including the location of the proposed valet parking service in relationship to traffic control devices;
- (3) The extent to which the valet parking service might unreasonably interfere with or impinge upon on-street parking;
- (4) The proximity of traditional on-street and off-street parking to the business to be served by the valet parking service; and
- (5) The proximity and relationship to any other previously permitted valet parking service.

A permit shall specify:

- (i) The business served;
- (ii) The location and limits of the valet parking service activities;
- (iii) The days and times when the valet parking service is permitted;
- (iv) Any additional restrictions or requirements regarding the location or operation of the valet parking service;
- (v) Identification tag requirements for valet operators;
- (vi) The permit expiration date; and
- (vii) Any other conditions on the permit.

A permit shall not be valid until the applicant has paid a right-of-way use fee established by the director/engineer taking into consideration the amount of right-of-way and other public property and facilities occupied by the valet parking service and potential lost meter revenue.

- (d) *Modification and revocation.* The city may modify or revoke a permit issued pursuant to this section at any time and for any reason.
- (e) *Temporary suspension.* The city may temporarily suspend a permit issued pursuant to this section when warranted by traffic conditions or anticipated traffic conditions.
- (f) *No rights established.* Nothing in this article is intended to establish any legal right to provide a valet parking service or any legal property interest in a valet parking permit.

(Ord. No. 3360, § 1, 8-28-2006)

#### Sec. 19-323. - Violations.

- (a) It shall be unlawful for a valet operator to provide or engage in valet parking service without a valid valet parking permit issued pursuant to this article. A valet parking permit that has expired or that has been suspended or revoked is not a valid permit.
- (b) It shall be unlawful for a valet operator to provide or engage in valet parking service in violation of the terms and conditions of a valet parking permit that pertains to the valet parking service.
- (c) It shall be unlawful for a valet operator to stop or direct traffic.

(Ord. No. 3360, § 1, 8-28-2006)

Sec. 19-324. - Enforcement.

- (a) Any person who violates subsection 19-323(a) shall be subject to a civil penalty of \$1,000.00 for each day during which such violation occurs.
- (b) Any person who violates subsections 19-323(b) or (c) shall be subject to a civil penalty of \$100.00 for each violation.
- (c) A violation of this article shall not constitute an infraction or misdemeanor punishable under G.S. 14-4.

(Ord. No. 3360, § 1, 8-28-2006)

Sec. 19-325. - Appeals.

The denial, modification, revocation, or suspension of a valet parking permit, or the issuance of civil penalties, may be appealed within ten days after notice of such action. Appeals shall be heard by the city manager or the city manager's designee. A ruling on appeal is subject to further review in the Superior Court of Mecklenburg County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after notice of the decision has been sent to the appellant.

(Ord. No. 3360, § 1, 8-28-2006)

Secs. 19-326—19-330. - Reserved.

ARTICLE XIII. - UTILITY RIGHT-OF-WAY USE<sup>[9]</sup>

Footnotes:

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**Editor's note**— Ord. No. 3730, § 1, adopted October 22, 2007, enacted provisions intended for use as article XII. Inasmuch as there are already provisions so designated, and at the discretion of the editor, said provisions have been redesignated as article XIII.

DIVISION 1. - GENERALLY

Sec. 19-331. - Purpose.

The purpose of this article is to provide for the proper management of the public rights-of-way in order to preserve the health, safety, and welfare of the citizens of the city. Specifically, this article is intended to provide for the reasonable regulation of the owners of public and private utility facilities located in the public rights-of-way, and the time, place and manner in which such utility facilities are located and worked upon.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-332. - Definitions.

*Utility* means a company that owns and provides services to customers through utility facilities located in the right-of-way. This definition shall include the city for purposes of the city's ownership of water, waste water, and stormwater utility facilities.

*Utility facility* means a pole, tower, water main or line, sanitary sewer pipe or line, stormwater pipe or structure, gas pipe or gas line, telecommunications line or equipment, power line, conduit, or any like structure.

(Ord. No. 3730, § 1, 10-22-2007)

Secs. 19-333—19-335. - Reserved.

## DIVISION 2. - STANDARDS AND PERMITS

Sec. 19-336. - Utility right-of-way master permit required.

- (a) It shall be unlawful to own any utility facility located in, on, under, or above the right-of-way without a valid and un-expired utility right-of-way master permit issued by the city. A utility right-of-way master permit shall, among other things:
- (1) Grant to the holder of the permit the general right to have utility facilities in the right-of-way provided, however, that the master permit does not constitute a permit for any particular installation, maintenance, repair, or removal of a utility facility;
  - (2) Specify the term of the permit (which term shall typically be for the one-year period, or portion of a one-year period, the expires on June 30);
  - (3) Provide for the removal of abandoned utility facilities;
  - (4) Acknowledge the city's right to require the removal or relocation of utility facilities when necessitated by a public need;
  - (5) Provide for the defense and indemnification of the city, its officers, and employees for claims and suits arising out of the use of the right-of-way;
  - (6) Require proof of suitable levels of insurance coverage;
  - (7) State the rights, if any, to assign or transfer rights or obligations without the prior consent of the city;
  - (8) Acknowledge the city's full retention of its police power;
  - (9) Provide for the registration of all contractors who work in the right-of-way on behalf of the owner; and
  - (10) Provide for the preparation, maintenance and maps of utility facilities located within the city.
- (b) Exceptions. The holder of an unrevoked and unexpired franchise issued by the city shall not be required to obtain a utility right-of-way master permit for purposes of the utility facilities located in the rights-of-way that are used for the purpose authorized by the franchise. This section shall not apply to the city.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-337. - Powers reserved.

A utility right-of-way master permit does not constitute a grant of all governmental approval necessary for the use and enjoyment of utility facilities located in the rights-of-way. A utility right-of-way master permit is not a franchise. With respect to the holder of a utility right-of-way master permit, the city

fully retains its franchising and police power authority and the holder of a utility right-of-way master permit is not relieved of its obligation to obtain all necessary franchises and permits and to comply with all other legal requirements.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-338. - Utility facility installation, maintenance, repair, and removal.

(a) The key business executive of the department of transportation is authorized to adopt, amend, and repeal standards and provisions governing the installation, maintenance, repair, and removal of utility facilities in, on, under, and over the rights-of-way. The standards and provisions shall, among other things, specify those types of activities that:

- (1) Require a utility work permit;
- (2) Do not require a utility work permit but must be done in accordance with the standards set forth in the standards and provisions; and
- (3) Are exempt.

The standards and provisions shall also address emergency situations and activities.

- (b) It shall be unlawful to install, maintain, repair, or remove any utility facility in the right-of-way in violation of the standards and provisions adopted pursuant to subsection (a).
- (c) It shall be unlawful to install, maintain, repair, or remove any utility facility in the right-of-way without a utility work permit if the standards and provisions adopted pursuant to subsection (a) require a utility work permit for such activities.
- (d) Any owner of utility facilities located in the right-of-way shall maintain a map of such facilities.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-339. - Utility pavement/sidewalk cuts.

- (a) The key business executive of the department of transportation is authorized to adopt, amend, and repeal standards and provisions governing the making, excavation, filling, repair, and closing of a utility pavement/sidewalk cut. The standards and provisions may provide that certain activities may be undertaken only in accordance with a utility work permit issued pursuant to such standards and provisions. The standards and provisions shall also address emergency situations and activities.
- (b) It shall be unlawful to make, excavate, fill, repair, or close a utility pavement cut in violation of the standards and provisions adopted pursuant to subsection (a).
- (c) It shall be unlawful to make, excavate, fill, repair, or close a utility pavement cut without a utility work permit if the standards and provisions adopted pursuant to subsection (a) require a permit for such activities.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-340. - Lane closure/traffic control.

- (a) The key business executive of the department of transportation is authorized to adopt, amend, and repeal standards and provisions governing the closing of any portion of the right-of-way to vehicular, pedestrian or other traffic, including standards and requirements for warning and controlling traffic including, but not limited to, development and enforcement of a Work Area Traffic Control Handbook (WATCH). The standards and provisions may provide that certain closings or traffic warning and control activities may be undertaken only in accordance with a utility work permit issued pursuant to

such standards and provisions. The standards and provisions shall also address emergency situations and activities.

- (b) It shall be unlawful for any person to close any portion of the right-of-way to vehicular, pedestrian, or other traffic in violation of the standards and provisions adopted pursuant to subsection (a).
- (c) It shall be unlawful for any person to close any portion of the right-of-way to vehicular, pedestrian, or other traffic without a utility work permit if the standards and provisions adopted pursuant to subsection (a) require a utility permit for such closing.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-341. - Additional violations.

- (a) Except in an emergency, it shall be unlawful to authorize a contractor to perform work regulated by this article without first registering such contractor with the city.
- (b) If a contractor is performing work on a utility facility in the right-of-way, it shall be unlawful for the contractor to fail or refuse to properly identify the Utility on whose behalf the contractor is performing the work when requested to do so by the director/engineer.
- (c) If a subcontractor is performing work on a utility facility in the right-of-way, it shall be unlawful for the subcontractor to fail or refuse to properly identify the contractor on whose behalf the subcontractor is performing the work when requested to do so by the director/engineer.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-342. - Fees and deposits.

Permit and other regulatory and nonregulatory use fees, including but not limited to utility right-of-way master permit fees, utility work permit fees, street cut patch fees, and pavement degradation fees, to be charged for the governmental activities undertaken pursuant to this division shall be established and revised in accordance with section 2-1.

A cash deposit, letter of credit or warranty bond may be required in an amount prescribed by the city to guarantee the completion of work in accordance with all rules and regulations.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-343. - Process for amending rules and regulations.

Prior to amending the standards and provisions authorized in sections 19-338, 19-339, and 19-340, the key business executive of the department of transportation shall provide written notice of such proposed amendments to all utilities that hold a valid and unexpired utility right-of-way master permit and provide a reasonable opportunity to comment at least 30 days before the effective date of such amendments.

(Ord. No. 3730, § 1, 10-22-2007)

Secs. 19-344, 19-345. - Reserved.

DIVISION 3. - ENFORCEMENT AND APPEALS

Sec. 19-346. - Administration and enforcement.

- (a) This article shall be administered and enforced by the director/engineer.
- (b) A violation of this article shall not constitute a misdemeanor or infraction punishable under G.S. 14-4. Any person who violates this article may be subject to all civil and equitable remedies stated in G.S. 160A-175. Notwithstanding the foregoing, the violation of a stop work order issued pursuant to section 19-338 shall constitute a misdemeanor punishable under G.S. 14-4.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-347. - Civil penalties.

The following civil penalties are established:

- (1) Violation of subsection 19-338(b) .....\$ 100.00
- (2) Violation of subsection 19-338(c) .....1,000.00
- (3) Violation of subsection 19-339(b) .....100.00
- (4) Violation of subsection 19-339(c) .....1,000.00
- (5) Violation of subsection 19-340(b) .....100.00
- (6) Violation of subsection 19-340(c) .....1,000.00
- (7) Violation of subsection 19-331(a) .....100.00

Civil penalties authorized by this section may be assessed against the utility on whose behalf work is being performed and against the contractor or subcontractor who is performing such work.

Billings not paid within 30 days will be assessed a late fee of one percent of the unpaid balance per month.

(Ord. No. 3730, § 1, 10-22-2007)

Sec. 19-348. - Administrative enforcement.

- (a) *Stop work orders.* A stop work order shall be in writing, state the work to be stopped, state the reasons therefore, and state the conditions under which the work may be resumed. A stop work order may be issued for:
  - (1) Working in the right-of-way without a valid and unexpired utility right-of-way master permit or unrevoked and unexpired franchise issued by the city as required by section 19-336;
  - (2) Use of a contractor that has not been registered with the city other than in an emergency;
  - (3) Violation of subsection 19-338(c);
  - (4) Violation of subsection 19-340(c);
  - (5) Failure to comply with subsection 19-338(b) within a reasonable period of time after notification of such non-compliance;
  - (6) Failure to comply with subsection 19-340(b) within a reasonable period of time after notification of such non-compliance;
  - (7) Violation of subsection 19-341(b);
  - (8) Violation of subsection 19-341(c).
- (b) *Permit denials.* The city may refuse to issue utility work permits required by this article to a utility that does not possess a valid and unexpired utility right-of-way master permit or unrevoked and unexpired

franchise as required by section 19-336 or to a utility that is in violation of the terms and conditions of a utility right-of-way master permit or franchise.

The city may refuse to issue utility work permits required by this article to a utility that has not paid civil penalties within 45 days after the date the penalties were assessed if the company has not appealed the assessment, or within 45 days of a final decision on appeal.

The city may refuse to issue utility work permits required by this article to a utility that has not paid costs assessed pursuant to subsection (c) within 45 days of the assessment.

- (c) *Cost of remediation.* In the event that a utility fails to properly repair and restore the right-of-way as required by this article, the city may provide of the repair and restoration and charge the cost to the utility.

(Ord. No. 3730, § 1, 10-22-2007)

#### Sec. 19-349. - Appeals.

- (a) Any person whose utility work permit application has been denied or who has been assessed a civil penalty may appeal such decision within ten days after notice of such denial or civil penalty assessment. A utility that has been charged repair and restoration costs pursuant to subsection 19-348(c) may appeal such decision within ten days after the city invoices such charge. Appeals shall be heard by the city manager or the city manager's designee who shall not be an employee of the department of transportation. The appellant shall have the right to present evidence at said hearing.
- (b) A ruling on appeal is subject to review in the Superior Court of Mecklenburg County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after notice of the decision has been sent to the appellant.

(Ord. No. 3730, § 1, 10-22-2007)

#### Sec. 19-350. - Reserved.

#### ARTICLE XIV. - NEWSRACKS<sup>[10]</sup>

#### Footnotes:

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**Editor's note**— Section 2 of Ord. No. 4125, adopted February 23, 2009, states the following: "Sections 19-351, 19-356, and 19-358 shall become effective upon adoption. The remaining sections shall become effective July 1, 2009."

#### Sec. 19-351. - 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:

*Modular newsrack* means a newsrack that contains multiple separate enclosed compartments to accommodate at any one time the display and sale or distribution of multiple distinct and separate newspapers, magazines, periodicals or other publications.



*Newsrack* means a self-service or coin operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale or distribution newspapers, magazines, periodicals or other publications to the public.

*Publisher* means the person who publishes a newspaper, magazine, periodical or other publication that is displayed and offered for sale or distribution in a newsrack.

*Sidewalk* means that portion of the street right-of-way which is improved and designated for the use of pedestrians.

(Ord. No. 4125, § 1, 2-23-2009)

Sec. 19-352. - Scope of regulation.

This article applies to newsracks located in public street rights-of-way. Newsracks located on private property, or on other governmentally owned or controlled property including, but not limited to, public transit facilities, are not subject to regulation under this article.

(Ord. No. 4125, § 1, 2-23-2009)

Sec. 19-353. - Publisher registration.

- (a) Prior to placing, or permitting the placement of a newsrack on a sidewalk, the publisher shall register with the city by providing the following information:
  - (1) Name, mailing address, telephone number, and e-mail address of the publisher and, if the publisher is not located in the city, a designated agent located in the city; and
  - (2) Name and frequency of publication of the newspapers, magazines, periodicals, or other publications to be sold or distributed from the newsracks.
- (b) A publisher shall update registration information required to be provided pursuant to subsection (a) within five days of any change of information.
- (c) It shall be unlawful for any person to violate any provision of this section.

(Ord. No. 4125, § 1, 2-23-2009)

Sec. 19-354. - Maintenance.

- (a) Newsracks must at all times be maintained in a neat and clean condition and in good repair.
- (b) It shall be unlawful for any person to violate any provision of this section.

(Ord. No. 4125, § 1, 2-23-2009)

Sec. 19-355. - Locational restrictions.

- (a) No person shall place, install, or maintain, or permit the placement, installation, or maintenance of a newsrack in the public right-of-way:
  - (1) Other than on a sidewalk;
  - (2) Within 24 inches of the back of curb or, if there is no curb, within 24 inches of the edge of the street pavement;
  - (3) At a location that leaves less than 48 inches of clear passage along the sidewalk for pedestrians;

- (4) Within 30 feet of the ballast curb line of a railroad or light rail track;
- (5) If on the street side of a sidewalk, within ten feet of a sign that demarks a public transportation stop;
- (6) Within four feet of a fire hydrant;
- (7) On or within four feet of a driveway, crosswalk, or crosswalk extension;
- (8) If on the street side of a sidewalk within municipal service districts 1, 2, 3, and 4, within the limits of a loading zone; or
- (9) At a location that interferes with or impairs the sightline of drivers at intersections.

Notwithstanding the foregoing, the city may approve locations that do not comply with these restrictions when conditions warrant.

- (b) Newsracks shall not be bolted or otherwise fixed to the ground or tied, chained, or otherwise fixed to a tree, traffic control device, sign, bench, bus shelter, parking meter, or pole. Newsracks may be chained or otherwise connected to each other for security purposes.
- (c) It shall be unlawful for any person to violate any provision of this section.

(Ord. No. 4125, § 1, 2-23-2009)

Sec. 19-356. - Center city modular newsrack zone.

- (a) The city manager is authorized to establish a center city modular newsrack zone in which the city will install one or more modular newsracks, and to amend the boundaries of such zone. All portions of the center city modular newsrack zone must be within municipal service district 3.
- (b) The director/engineer is authorized and directed to develop regulations for assigning spaces for rent within a modular newsrack when demand for available spaces warrants such assignment. The regulations shall differentiate between paid and unpaid publications and shall:
  - (1) Be content-neutral;
  - (2) Allocate spaces through a lottery or similar method;
  - (3) Include provisions for periodically reallocating spaces; and
  - (4) Provide that allocated spaces are not transferable.
- (c) Other than a modular newsrack owned by the city, no person shall place, install, or maintain, or permit the placement, installation, or maintenance of a newsrack in the public right-of-way within the center city modular newsrack zone.
- (d) It shall be unlawful for any person to violate any provision of this section.

(Ord. No. 4125, § 1, 2-23-2009)

Sec. 19-357. - Miscellaneous.

- (a) The city may order the removal of newsracks located in public street rights-of-way within specified areas of the city for special events or other anticipated mass gatherings when the Charlotte Mecklenburg Police Department determines that the presence of the newsracks would pose an unreasonable threat to the public health, safety, or welfare. Notice of an order issued pursuant to this subsection shall be given to each affected publisher (or designated agent) at least ten business days before said event or gathering and shall specify the period of time during which the newsracks must be removed. Notwithstanding the preceding sentence, if it is not practical to give notice at least ten business days before said event or gathering, the city shall give such advance notice as is practicable.

In the event that a newsrack is not removed in accordance with an order issued pursuant to this subsection, the city may remove and store the newsrack. Upon removal, the city shall notify the publisher that the newsrack has been removed and the location of and procedure for reclaiming the newsrack. In the event that the publisher does not reclaim the newsrack within 45 days of notification of removal, the newsrack will be deemed to have been abandoned and may be disposed of by the city.

- (b) A newsrack or an allocated space in a modular newsrack that remains empty for a period of 30 consecutive days shall be deemed abandoned. The city may summarily remove an abandoned newsrack. Upon removal, the city shall notify the publisher that the newsrack has been removed and the location of and procedure for reclaiming the newsrack. In the event that the publisher does not reclaim the newsrack within 45 days of notification of removal, the newsrack may be disposed of by the city. An abandoned space within a modular newsrack may be reallocated to another publisher/publication.

(Ord. No. 4125, § 1, 2-23-2009)

Sec. 19-358. - Regulatory and nonregulatory user fees.

The city manager is authorized to establish fees in accordance with section 2-1 for reasonable modular newsrack rental fees, newsrack material removal fees, and newsrack removal and storage fees.

(Ord. No. 4125, § 1, 2-23-2009)

Sec. 19-359. - Administration and enforcement.

- (a) This article shall be administered and enforced by the director/engineer.
- (b) The city may issue a notice of violation to a publisher for any apparent violation of this article. Unless the violation is willful or a repeated violation, if the newsrack is brought into compliance within 15 business days after issuance of the notice of violation, the city shall dismiss the notice of violation and no penalty shall be incurred. In the event that a newsrack is not brought into compliance within 15 business days after a notice of violation has been issued, the city may summarily remove the newsrack. Notwithstanding the preceding sentence, in the event that a newsrack poses an immediate threat to the public health or safety, the city may summarily remove the newsrack without prior notice. Upon removal, the city shall notify the publisher that the newsrack has been removed, the reason for removal, and the location of and procedure for reclaiming the newsrack. In the event that the publisher does not reclaim the newsrack within 45 days of notification of removal, the newsrack will be deemed to have been abandoned and may be disposed of by the city.
- (c) A violation of this article shall not constitute a misdemeanor or infraction punishable under G.S. 14-4. Any person who violates this article may be subject to all civil and equitable remedies stated in G.S. 160A-175.
- (d) Any person who willfully or repeatedly violates this article or fails to remedy a violation within 15 business days after a notice of violation has been issued, shall be subject to a civil penalty of \$50.00.

(Ord. No. 4125, § 1, 2-23-2009)

Sec. 19-360. - Appeals.

- (a) Any person who has been issued a notice of violation, been assessed a civil penalty, or whose newsrack has been removed pursuant to this article may appeal such decision within 30 days after receiving notice of the enforcement decision. Appeals shall be heard by the city manager or the city

manager's designee who shall not be an employee of the department of transportation. The appellant shall have the right to present evidence at said hearing.

- (b) A ruling on appeal is subject to review in the superior court of Mecklenburg County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the clerk of superior court within 30 days after notice of the decision has been sent to the appellant.

(Ord. No. 4125, § 1, 2-23-2009)

#### ARTICLE XV. - SHARED-USE MOBILITY SYSTEMS

##### Sec. 19-361. - Purpose.

The purpose of this article is to provide for the proper management of the public rights-of-way to preserve the health, safety, and welfare of the citizens of the city. Specifically, this article is intended to provide for the reasonable regulation of ~~operation of~~ shared-use mobility systems ~~operated~~~~located~~ in the public rights-of-way. It applies to all modes of dockless, shared transportation vehicles that are operated as part of a commercial enterprise. This article shall not apply to privately owned micromobility vehicles that are not operated as part of a commercial enterprise or shared-use system or scheme. This article also shall not apply to any mode of transport, business model, or device that requires a fixed or dedicated docking station or storefront for the rental or return of units or to any device or vehicle that is used by an individual with a mobility disability recognized by the Americans with Disabilities Act, for the purpose of locomotion.

(Ord. No. [9490](#), § 2.A, 1-14-2019)

##### Sec. 19-362. - Definitions.

Shared-use mobility system means one or more shared self-service dockless vehicles including bicycles, electric assisted bicycles, electric standup scooters, and/or devices similar in size, weight, and/or operation, offered for short-term rental by a Shared-use mobility system operator for use point to point trips whereby the vehicle is intended to remain placed in the public right-of-way by customers without the installation of any infrastructure, when not being rented by a customer. This definition shall not include motor vehicles as defined by section 14-1, for-hire vehicles as defined by section 22-01, or the transportation services offered by the Charlotte Area Transit System.

Shared-use mobility system operator means an individual or a public, private, or non-profit entity that manages a Shared-use mobility system.

(Ord. No. [9490](#), § 2.A, 1-14-2019)

##### Sec. 19-363. - Permit required.

- (a) It shall be unlawful to operate a shared-use mobility system within any public right-of-way without first obtaining a permit from the director. The permit shall, among other things:
- (1) Specify the term of the permit;
  - (2) Acknowledge the city's right to require the removal or relocation of any device operating under the permit;
  - (3) Provide for the defense and indemnification of the city, its officers, and employees for claims and suits arising out of the use of the right-of-way;

- (4) Require suitable levels of insurance coverage;
- (5) State the rights, if any, to assign or transfer rights or obligations without the prior consent of the city; and
- (6) Acknowledge the city's full retention of its police power.

(Ord. No. [9490](#), § 2.A, 1-14-2019)

Sec. 19-364. - Administration and enforcement.

- (a) This article shall be administered and enforced by the director.
- (b) The director shall be authorized to:
  - (1) Issue permits;
  - (2) Develop and revise permit requirements and guidelines;
  - (3) Establish and amend the maximum and/or minimum allowable number of vehicles authorized under the permit;
  - (4) Establish and revise permit fees;
  - (5) Establish and revise regulatory fees in accordance with section 2-1.
  - (6) Revoke permits for good cause. Good cause shall, among other things, include:
    - a. Permittee failed to pay a fee and/or civil penalty within 30 days following notice of nonpayment;
    - b. Permittee violated any statute or ordinance governing operation of the devices covered under the permit; or
    - c. Permittee violated one or more conditions of the permit.
- (c) The director, her designee, or any authorized employee of the city may impound any vehicle found in violation of this article and charge a civil penalty. The director or her designee is authorized to dispose of an impounded vehicle subject to this article if civil penalties are not paid within 90 days of issuance.

(Ord. No. [9490](#), § 2.A, 1-14-2019)

Sec. 19-365. - Civil penalties.

- (a) A violation of this article shall not constitute a misdemeanor or infraction punishable under G.S. 14-4. Any person who violates this article may be subject to all civil and equitable remedies stated in G.S. 160A-175.
- (b) A violation of this article may be enforced by the issuance of a civil penalty in the amount of \$25.00 per vehicle.
- (c) An additional late fee civil penalty in the amount of \$25.00 per vehicle may be assessed if the initial civil penalty is not paid or appealed within 30 days from the date of issuance.
- (d) Civil penalties shall be issued against the permittee, permit holder, and/or business with ownership of the subject vehicles.

(Ord. No. [9490](#), § 2.A, 1-14-2019)

Sec. 19-366. - Appeals.

A violation enforced through the issuance of a civil penalty may be appealed pursuant to section 2-25 of this Code.

(Ord. No. [9490](#), § 2.A, 1-14-2019)

ORDINANCE NO. 94-X

O-44

AN ORDINANCE TO AMEND ORDINANCE NUMBER 9807-X, THE 2020-2021 BUDGET ORDINANCE, PROVIDING AN APPROPRIATION OF \$185,650 FOR TRAFFIC SIGNAL INSTALLATIONS AND IMPROVEMENTS

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**BE IT ORDAINED**, by the City Council of the City of Charlotte;

Section 1. That the sum of \$185,650 is hereby estimated to be available from the following sources:

CK Arboretum Southeast (\$150,000), and  
Prosperity Village Th, LLC (\$35,650).

Section 2. That the sum of \$185,650 is hereby appropriated in the Capital Investment Fund (4001) into the following projects:

Providence Rd. & Arboretum Shopping Center - 4292000486 (\$150,000), and  
Oehler Rd and Oehler Crossing Dr. - 4292000485 (\$35,650).

Section 3. That the existence of this project may extend beyond the end of the fiscal year. Therefore, this ordinance will remain in effect for the duration of the project and funds are to be carried forward to subsequent fiscal years until all funds are expended or the project is officially closed.

Section 4. That all ordinances in conflict with this ordinance are hereby repealed.

Section 5. That this ordinance shall be effective upon adoption.

Approved as to form:



Asst. City Attorney

**CERTIFICATION**

I, Stephanie C. Kelly, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 28<sup>th</sup> day of June 2021, the reference having been made in Minute Book 153, and recorded in full in Ordinance Book 64, Page(s) 261.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this 28<sup>th</sup> day of June 2021.



Stephanie C. Kelly, City Clerk, MMC, NCCMC

O-45

ORDINANCE NO. 95-X

AN ORDINANCE TO AMEND ORDINANCE NUMBER 9807-X, THE 2020-2021 BUDGET ORDINANCE, PROVIDING AN APPROPRIATION OF \$62,500 IN SUPPLEMENTAL DEVELOPER FUNDS FOR TRAFFIC SIGNAL INSTALLATIONS AND IMPROVEMENTS

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**BE IT ORDAINED**, by the City Council of the City of Charlotte;

Section 1. That the sum of \$62,500 is hereby estimated to be available from the following sources:

Northwood Development, LLC

Section 2. That the sum of \$62,500 is hereby appropriated in the Capital Investment Fund (4001) into the following project:

Johnson Rd. and Brixham Hill Ave. (4292000475)

Section 3. That the existence of this project may extend beyond the end of the fiscal year. Therefore, this ordinance will remain in effect for the duration of the project and funds are to be carried forward to subsequent fiscal years until all funds are expended or the project is officially closed.

Section 4. That all ordinances in conflict with this ordinance are hereby repealed.

Section 5. That this ordinance shall be effective upon adoption.

Approved as to form:

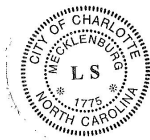


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**CERTIFICATION**

I, Stephanie C. Kelly, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 28<sup>th</sup> day of June 2021, the reference having been made in Minute Book 153, and recorded in full in Ordinance Book 64, Page(s) 262.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this 28<sup>th</sup> day of June 2021.





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Stephanie C. Kelly, City Clerk, MMC, NCCMC