

CHAPTER 6: FLOOD DAMAGE PREVENTION

Section

9-6-1	Statutory authorization, findings of fact, purpose and objectives
9-6-2	Definitions
9-6-3	General provisions
9-6-4	Administration
9-6-5	Provisions for flood hazard reduction
9-6-6	Legal statutes and provisions

Cross-reference:

Emergency and rescue, see §§ 5-3-1 et seq.

Public Safety, generally, see Title 5

Public Utilities, see Title 8

Subdivisions within floodprone or flood hazard areas, see § 9-5-94

Editor's note:

Ch. 6 was rewritten by Ord. No. 03-123, enacted Dec. 15, 2003, with an effective date of Jan. 2, 2004. Former Ch. 6, §§ 9-6-1—9-6-6 was replaced by § 1 of Ord. No. 98-8, enacted Jan. 8, 1998. Ch. 6, §§ 9-6-1—9-6-14 and 9-6-16—9-6-19, was repealed by § 1 of Ord. No. 1705, enacted April 9, 1987, and § 1 of Ord. No. 1705 also enacted, in lieu thereof, a new Ch. 6 as previously set forth in §§ 9-6-1—9-6-6. The repealed provisions pertained to flood hazard areas and derived from Ord. No. 786, adopted June 8, 1978.

SEC. 9-6-1 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

(A) *Statutory authorization.* The legislature of the State of North Carolina has, in Part 6, Article 21 of G.S. Chapter 143; Parts 3, 5 and 8 of Article 19 of G.S. Chapter 160A; and Article 8 of G.S. Chapter 160A, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

(B) *Findings of fact.*

- (1) The flood hazard areas within the jurisdiction of the City of Greenville are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

(C) *Statement of purpose.* It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) Restrict or prohibit uses 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;
- (2) Require that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction;

- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging and all other development which may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(D) *Objectives.* The objectives of this chapter are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business losses and interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, cable and sewer lines, streets and bridges located in flood prone areas;
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and
- (7) To ensure that potential homebuyers are notified that property is in a special flood hazard area.

(Ord. No. 03-123, passed 12-15-2003)

SEC. 9-6-2 DEFINITIONS.

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

Accessory structure. 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). An extension or increase in the floor area or height of a building or structure.

Appeal. A request for a review of the Local Floodplain Administrator’s interpretation of any provision of this chapter.

Area of shallow flooding. A designated AO or VO Zone on a community’s Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard. See definition of special flood hazard area (SFHA).

Base flood. The flood having a 1% chance of being equaled or exceeded in any given year.

Base flood elevation (BFE). A determination as published in the Flood Insurance Study of the water surface elevations of the base flood.

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

Building. See definition of structure.

Chemical storage facility. A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, or drilling operations or storage of equipment or materials.

Disposal. Defined as in G.S. 130A-290(a)(6).

Elevated building. A non-basement building, which has its reference level raised above the ground by means of pilings, columns (posts and piers), or shear walls parallel to the flow of water.

Encroachment. 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.

Existing manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before June 8, 1978.

Flood or flooding. 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
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood boundary and floodway map (FBFM). An official map of a community, issued by the Federal Emergency Management Agency, on which the Special flood hazard areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

Floodplain development permit. Any type of permit including grading, building, or any other development permit that is required in conformance with the provisions of this chapter prior to the commencement of any development activity.

Flood hazard boundary map (FHBM). An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the special flood hazard have been defined as Zone A.

Flood insurance. The insurance coverage provided under the National Flood Insurance Program.

Flood insurance rate map (FIRM). An official map of a community, issued by the Federal Emergency Management Agency on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

Flood insurance study (FIS). An examination, evaluation, and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones, and other flood data in a community issued by FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

Floodplain or flood prone area. Any land area susceptible to being inundated by water from any source.

Floodplain administrator. The individual appointed to administer and enforce the floodplain management regulations.

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

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

Flood prone area. See definition of floodplain.

Floodproofing. 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.

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

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

Floor. See definition of lowest floor.

Freeboard. The additional amount of height added to the base flood elevation (BFE) to account for uncertainties in the determination of flood elevations. See also definition of regulatory flood protection elevation.

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

Hazardous waste management facility. A facility for the collection, storage, processing, treatment, recycling, recovery or disposal of hazardous waste as defined in G.S. Chapter 130A, Article 9.

Highest adjacent grade (HAG). The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

Historic structure. Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the United States Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (2) 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;
- (3) Individually listed on a state inventory of historic places; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of Interior, or directly by the Secretary of Interior in states without approved programs.

Lowest adjacent grade (LAG). The elevation of the ground, sidewalk, patio slab or deck support immediately next to the building after completion of the building. For Zones A and AO use the natural grade elevation prior to construction.

Lowest floor. Subfloor, top of slab or grade of the lowest enclosed area (including 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 an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

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

Manufactured home park (MHP) or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value. The building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. “Market value” can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value) or adjusted assessed values.

Mean sea level. For purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988 or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

New construction. Structures for which the start of construction commenced on or after the effective date of the original version of this chapter and includes any subsequent improvements to such structures.

Nonconforming building or use. Any legally existing building or use which fails to comply with the current provisions of this chapter.

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

Obstruction. Includes but is not limited to any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

Post-firm. Construction or other development, which started on or after January 1, 1975, or on or after the effective date of the initial Flood Insurance Rate Map for the area, whichever is later.

Pre-firm. Construction or other development, which started before January 1, 1975 or before the effective date of the initial Flood Insurance Rate Map for the area, whichever is later.

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

Recreational vehicle (RV). 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 light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel or seasonal use.

Reference level. The portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance of the building. Within special flood hazard areas designated as Zones A1-A30, AE, A, A99, AO or AH, the reference level is the top of the lowest floor or lowest attendant utility (including ductwork), whichever is lower.

Regulatory flood protection elevation. The elevation to which all structures and other development located within the special flood hazard areas must be elevated or floodproofed, if nonresidential.

- (1) In "Special Flood Hazard Areas" where base flood elevations (BFEs) have been determined, this elevation shall be at least the BFE plus two (2) feet for all structures and other development except manufactured homes.
- (2) For manufactured homes, this elevation shall be at least the BFE plus two (2) feet, provided that no portion of the manufactured home below the lowest floor is lower than the base flood elevation. Allowable elements below the lowest floor are limited to electrical, mechanical, and duct work, which are considered a standard part of the manufactured home. Cross over ducts for double and triple wide manufactured homes are specifically exempted from the freeboard requirement provided the bottom of all such cross over ducts are above the base flood elevation. All electrical, mechanical, and duct work which are not a part of the manufactured home shall be no lower than two (2) feet above the base flood elevation.
- (3) In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

Remedy a violation. To bring the structure or other development into compliance with state or local floodplain management regulations, 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. Flood-related damages sustained by a structure on two separate occasions during any ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

Retrofitting. Measures, such as floodproofing, elevation, construction of small levees, and other modifications, taken on an existing building or its yard to protect it from flood damage.

Riverine. Relating to, formed by, or resembling a river (including tributaries), stream, brook and the like.

Salvage yard. Property used for the storage, collection and/or recycling of any type of equipment whatsoever, whether industrial or noncommercial, and including but not limited to vehicles, appliances and related machinery.

Special flood hazard area (SFHA). The land in the floodplain subject to a 1% or greater chance of being flooded in any given year as determined in section 9-6-3(B) of this chapter.

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

Solid waste disposal site. Defined as in G.S. 130A-290(a)(36).

Start of construction. Includes substantial improvements, and the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction

of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Structure. For floodplain management purposes, a walled and roofed building, a manufactured home, or a gas or liquid storage tank, or that is principally above ground.

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

Substantial improvement. Any combination of repairs, reconstruction, rehabilitation, addition or other improvement of a structure, taking place during any one-year period whereby the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project of improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

Variance. A grant of relief from the requirement of this chapter that permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

Violation. The failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in sections 9-6-4 and 9-6-5 is presumed to be in violation until such time as the documentation is provided.

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

Water surface elevation (WSE). The height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Ord. No. 03-123, passed 12-15-2003; Ord. No. 14-031, passed 5-8-2014)

SEC. 9-6-3 GENERAL PROVISIONS.

(A) *Lands to which this chapter applies.* This chapter shall apply to all special flood hazard areas within the jurisdiction, including extraterritorial jurisdictions (ETJ) if applicable, of the City of Greenville.

(B) *Basis for establishing the special flood hazard areas.*

- (1) The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and Federal Emergency Management Agency (FEMA) in its Flood Insurance Study (FIS) for Pitt County, dated July 7, 2014, and its accompanying Flood Insurance Rate Map (FIRM), including any digital data developed as part of the FIS, which are adopted by reference and declared to be a part of this ordinance. Future revisions to the FIS or FIRM panels that do not change flood hazard data within the jurisdictional authority of the City of Greenville are also adopted by reference and declared to be part of this ordinance. Subsequent revisions to the FIRM should be adopted within 6 months.
- (2) The initial Flood Insurance Rate Map for the City of Greenville is dated July 3, 1978.

(C) *Establishment of development permit.* A floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities within the special flood hazard area to which this chapter applies.

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

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

(F) *Interpretation.* In the interpretation and application of this chapter all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(G) *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. Actual flood heights may be increased by man-made 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 or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(H) *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 variance or special exceptions, 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 \$50 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 03-123, passed 12-15-2003; Ord. No. 13-015, § 1, passed 4-11-2013; Ord. No. 14-031, passed 5-8-2014)

SEC. 9-6-4 ADMINISTRATION.

(A) *Designation of Local Floodplain Administrator.* The City Engineer or a designee is hereby appointed to administer and implement the provisions of this chapter. For the purposes of this chapter, the City Engineer or designee shall hereafter be referred to as “Local Floodplain Administrator.”

(B) *Floodplain development permit and certification requirements; plans and application requirements.* Application for a floodplain development permit shall be made to the Local Floodplain Administrator on forms furnished by him or her prior to any development activities within flood prone areas. The following items/information shall be presented to the Local Floodplain Administrator to apply for a floodplain development permit:

- (1) A plot that shows the 100-year floodplain contour or a statement that the entire lot is within the floodplain must be provided by the floodplain development permit applicant when the lot is or appears to be within the floodplain as mapped by the Federal Emergency Management Agency or the floodplain identified pursuant to either section 9-6-4(E)(11), section 9-6-5(D) and section 9-6-5(E). The plot plan must be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same;
- (2) The plot plan required by subsection (B)(1) above must show the floodway or non-encroachment area(s), if any, as identified by the Federal Emergency Management Agency or the floodway/non-encroachment area identified pursuant to either section 9-6-4(E)(11) or section 9-6-5(E);
- (3) Where base flood elevation data is provided in accordance with section 9-6-3(B) or section 9-6-4(E)(11), the application for a floodplain development permit within the Zone A on the Flood Insurance Rate Map shall show:
 - (a) The elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;
 - (b) If the structure has been floodproofed in accordance with section 9-6-5(B)(2), the elevation (in relation to mean sea level) to which the structure was floodproofed; and
 - (c) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
- (4) Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor at least two feet above the highest adjacent grade;
- (5) Where any watercourse will be altered or relocated as a result of proposed development, the application for a development permit shall include: a description of the extent of watercourse alteration or relocation; 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 showing the location of the proposed watercourse alteration or relocation;
- (6) When a structure is floodproofed, the applicant shall provide a floodproofing certificate and back-up plans from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in section 9-6-5(B)(2);
- (7) An elevation certificate (FEMA Form 81-31) or floodproofing certificate (FEMA Form 81-65) is required after the reference level is completed. Within 21 calendar days of establishment of the reference level elevation, or floodproofing, by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the Local Floodplain Administrator a certification of the elevation of the reference level, or floodproofed elevation, whichever is applicable in relation to mean sea level. The 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, the certification shall be prepared by or under

the direct supervision of a professional engineer or architect and certified by same. Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Local Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the certification or failure to make the corrections required shall be cause to issue a stop-work order for the project;

- (8) A final as-built elevation certificate (FEMA Form 81-31) or floodproofing certificate (FEMA Form 81-65) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the Local Floodplain Administrator a certification of final as-built construction of the elevation or floodproofed elevation of the reference level and all attendant utilities. The 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, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Local Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make the corrections required shall be cause to withhold the issuance of a certificate of compliance/occupancy;
- (9) If a manufactured home is placed within an A, AO, AE or A1-30 Zone and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per section 9-6-3(B);
- (10) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; 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 showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit;
- (11) 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) Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers);
 - (b) Should solid foundation perimeter walls be used in floodplains, details of sufficient openings to facilitate the unimpeded movements of floodwaters in accordance with section 9-6-5(B)(5).
- (12) Usage details of any enclosed space below the regulatory flood protection elevation;
- (13) 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;
- (14) Copy of all other local, state and federal permits required prior to floodplain development permit issuance (i.e., wetlands, erosion and sedimentation control, riparian buffers, mining and the like); and

- (15) If floodplain development permit is issued for placement of recreational vehicles and/or temporary structures, documentation to ensure section 9-6-5(B)(4) and (B)(6) of this Code are met.

(C) *Certification exemptions.* The following structures, if located within A, AO, AE or A1-30 Zones, are exempt from the elevation/floodproofing certification requirements specified in subsections (A) and (B) above:

- (1) Recreational vehicles meeting requirements of section 9-6-5(B)(4);
- (2) Temporary structures meeting requirements of section 9-6-5(B)(6); and
- (3) Accessory structures less than 150 square feet meeting requirements of section 9-6-5(B)(7).

(D) *Floodplain development permit data requirements.* The following information shall be provided at a minimum on the floodplain development permit to ensure compliance with this Code:

- (1) A description of the development to be permitted under the floodplain development permit issuance;
- (2) The special flood hazard area determination for the proposed development per available data specified in section 9-6-3(B);
- (3) The regulatory flood protection elevation required for the reference level and all attendant utilities;
- (4) The regulatory flood protection elevation required for the protection of all public utilities;
- (5) All certification submittal requirements with timelines;
- (6) State that no fill material shall encroach into the floodway or non-encroachment area of any watercourse, if applicable;
- (7) If in an A, AO, AE or A1-30 Zone, specify the minimum foundation opening requirements; and
- (8) State limitations of below BFE enclosure uses (if applicable) (i.e., parking, building access and limited storage only).

(E) *Duties and responsibilities of the Local Floodplain Administrator.* Duties of the Local Floodplain Administrator shall include but not be limited to:

- (1) Review all floodplain development applications and issue permits for all proposed development within flood prone areas to assure that the permit requirements of this chapter have been satisfied;
- (2) Advise permittee that additional federal or state permits (i.e., wetlands, erosion and sedimentation control, riparian buffers, mining, and the like) may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the floodplain development permit;
- (3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
- (4) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished;
- (5) Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of section 9-6-5 are met;

Greenville - Building, Planning and Development Regulations

- (6) Obtain actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and all attendant utilities in accordance with subsection (B)(7) or (8) of this section;
- (7) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with subsection (B)(7) or (8) of this section;
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with subsection (B) above;
- (9) When floodproofing is utilized for a particular structure, the Local Floodplain Administrator shall obtain certification from a registered professional engineer or architect, in accordance with this section and section 9-6-5(B)(2);
- (10) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Local Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this chapter;
- (11) When base flood elevation data has not been provided in accordance with section 9-6-3(B), then the Local Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation along with floodway data and/or non-encroachment area data available from a federal, state or other source, including data developed pursuant to section 9-6-5(E)(4) in order to administer the provisions of section 9-6-5;
- (12) When base flood elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with section 9-6-3(B), obtain, review and reasonably utilize any floodway data, and/or non-encroachment area data available from a federal, state or other source in order to administer the provisions of this chapter;
- (13) When the exact location of boundaries of the special flood hazard areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. A copy of the Letter of Map Amendment issued from FEMA will be maintained by the Local Floodplain Administrator in the permit file;
- (14) Make on-site inspections of projects in accordance with subsection (F) below. As the work pursuant to a floodplain development permit progresses, the Local Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Local Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action;
- (15) Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with subsection (F) below. Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this chapter, the Local Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor;
- (16) All records pertaining to the provisions of this chapter shall be permanently maintained in the office of the Local Floodplain Administrator and shall be open for public inspection;
- (17) Annexation: provide the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program with two copies of the maps delineating new corporate limits within six months from date of annexation or change in corporate boundaries;

- (18) Revocation of floodplain development permits as required. The Local Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked;
 - (19) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The Local Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action; and
 - (20) Follow through with corrective procedures of subsection (F) below.
- (F) *Administrative corrective procedures.*
- (1) *Violations to be corrected.* When the Local Floodplain Administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law in the property he or she owns.
 - (2) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the Local Floodplain Administrator shall give the owner written notice, by certified or registered mail to his or her last known address or by personal service, stating that:
 - (a) The building or property is in violation of the Flood Damage Prevention Ordinance;
 - (b) A hearing will be held before the Local Floodplain Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
 - (c) Following the hearing, the Local Floodplain Administrator may issue an order to alter, vacate or demolish the building; or to remove fill as appears appropriate.
 - (3) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the Local Floodplain Administrator finds that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within 60 days. The Local Floodplain Administrator may prescribe a period shorter than 60 days; provided that the Local Floodplain Administrator finds that there is imminent danger to life or other property.
 - (4) *Appeal.* Any owner who has received an order to take corrective action may appeal from the order to the Board of Adjustment by giving notice of appeal in writing to the Local Floodplain Administrator and the City Clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the Local 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.
 - (5) *Failure to comply with order.* If the owner 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 or she shall be guilty of a misdemeanor and shall be punished in the discretion of the court.
- (G) *Variances.*
- (1) The Board of Adjustment as established by the city shall hear and decide requests for variances from the requirements of this chapter.

Greenville - Building, Planning and Development Regulations

- (2) Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal the decision to the Superior Court as provided in G.S. Chapter 7A of the North Carolina General Statutes.
- (3) Variance 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.
- (4) In passing upon such applications for variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location, where applicable;
 - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) The findings listed above shall be submitted to the Board of Adjustment, in writing, and included in the application for a variance.
- (6) 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.
- (7) Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.
- (8) Conditions for variances:
 - (a) Variances may 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 only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (c) 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, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or chapters.
- (d) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.
- (e) The Local Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) A variance may be issued 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 conditions are met. A floodplain development permit may be issued for such development only if a variance is granted:
- (a) The use serves a critical need in the community;
 - (b) No feasible location exists for the use outside the special flood hazard area;
 - (c) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection level;
 - (d) The use complies with all other applicable federal, state and local law; and
 - (e) The City of Greenville has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least 30 days prior to granting the variance.
- (Ord. No. 03-123, passed 12-15-2003)

SEC. 9-6-5 PROVISIONS FOR FLOOD HAZARD REDUCTION.

- (A) *General standards.* In all special flood hazard areas the following provisions are required:
- (1) All new construction and substantial improvement shall be anchored to prevent flotation, collapse or lateral movement of the structure;
 - (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
 - (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
 - (4) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be elevated to the regulatory flood protection elevation and/or designed so as to prevent water from entering or accumulating within the components during conditions of flooding. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, duct work, electric meter panels/boxes, utility/cable boxes, appliances (i.e., washers, dryers, refrigerator and the like), hot water heaters, electric outlets/switches;

- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters;
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- (8) Any alteration, repair, reconstruction or improvement 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;
- (9) Nonconforming structures or other development may not be enlarged, replaced or rebuilt unless the enlargement or reconstruction is accomplished in conformance with the provisions of this chapter. Provided, however, nothing in this chapter shall prevent the repair, reconstruction or replacement of a building or structure existing on the effective date of this chapter and located totally or partially within the floodway, non-encroachment area, or stream setback provided that the bulk of the building or structure below regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback is not increased and provided that such repair, reconstruction or replacement meets all of the other requirements of this chapter; and
- (10) New solid waste disposal facilities, hazardous waste management facilities, salvage yards and chemical storage facilities shall not be permitted in special flood hazard areas. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to section 9-6-4(B) of this chapter.

(B) *Specific standards.* In all special flood hazard areas where base flood elevation data have been provided as set forth in section 9-6-3(B) or section 9-6-4(E)(11) and (12), the following provisions are required:

- (1) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation.
(Ord. No. 00-19, § 4, passed 2-10-2000)
- (2) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial or other nonresidential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation. Such structures may be floodproofed to the regulatory flood protection elevation in lieu of being elevated, provided that all areas of the structure below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect 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 official as set forth in section 9-6-4(B)(3).
- (3) *Manufactured homes.*
 - (a) New or replacement manufactured homes shall be elevated on a foundation such that the reference level of the manufactured home is elevated no lower than the regulatory flood protection elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
 - (b) Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of subsection (B)(3)(a) above must be elevated so that the lowest floor of the manufactured home is elevated no lower than the regulatory flood protection elevation, and be securely anchored to an adequately anchored foundation to resist flotation,

collapse and lateral movement in accordance with the State of North Carolina *Regulations for Manufactured/Mobile Homes*, 1995 Edition and any revision thereto adopted by the Commissioner of Insurance pursuant to G.S. 143-143.15 or a certified engineered foundation. Additionally, all manufactured homes located in special flood hazard areas must be installed either on a pre-approved foundation design from the *Manual of Standard Designs and Details* or on a foundation design certified by a professional engineer registered in the State of North Carolina. Furthermore, all tanks, decks, porches and steps to the manufactured home must be sufficiently designed and anchored to prevent collapse and/or flotation off the site, except that porches and steps serving a manufactured home on a lot that is less than five feet below the lowest floor of the manufactured home at the location of the porch or steps shall not be required to be anchored.

- (c) An evacuation plan must be developed for evacuation of all residents of all new substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Local Floodplain Administrator and the local Emergency Management Coordinator.
 - (d) When the elevation of the manufactured home would be met by an elevation of the chassis 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.
 - (e) If a manufactured home is placed with the elevation of the chassis above 36 inches in height, an engineered foundation certification is required per subsection (B)(3).
 - (f) All foundation enclosures or skirting shall be in accordance with subsection (B)(5) of this section.
- (4) *Recreational vehicles.* Recreational vehicles placed on sites within a special flood hazard area shall either:
- (a) Be on site for fewer than 180 consecutive days;
 - (b) 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
 - (c) Meet all the requirements for new construction, including anchoring and elevation requirements of section 9-6-4(B) and subsections (A) and (B)(3) of this section.
- (5) *Elevated buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas that are below the regulatory flood protection elevation shall not be designed for human habitation, but shall be designed to be usable solely for the parking of vehicles, building access or limited storage of maintenance equipment used in connection with the premises in an area other than a basement, be constructed entirely of flood resistant materials below the regulatory flood protection level and meet the following design criteria.
- (a) Measures for complying with this requirement shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. To meet this requirement, the foundation must either be certified by a professional engineer or architect or meet the following minimum criteria:
 - 1. Provide a minimum of two openings on different sides of each enclosed area subject to flooding having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - 2. The bottom of all openings shall be no higher than one foot above the adjacent grade;
 - 3. Openings may be equipped with screens, louvers or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions;

Greenville - Building, Planning and Development Regulations

4. If a building has more than one enclosed area, each area must have openings on exterior walls to allow floodwater to directly enter; and
 5. 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.
 - (b) 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 entry to the living area (stairway or elevator); and
 - (c) The interior portion of the enclosed area shall not be partitioned or finished into separate rooms except to enclose storage areas.
- (6) *Temporary structures.* Prior to the issuance of a floodplain development permit for a temporary structure, the following requirements must be met:
- (a) All applicants must submit to the Local Floodplain Administrator prior to the issuance of the floodplain development permit a plan for the removal of the structure(s) in the event of a hurricane or flash flood warning notification. The plan must include the following information:
 1. A specific time period for which the temporary use will be permitted;
 2. The name, address and phone number of the individual responsible for the removal of the temporary structure;
 3. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 4. A copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed; and
 5. Designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.
 - (b) The above information shall be submitted in writing to the Local Administrator for review and written approval.
- (7) *Accessory structures.* When accessory structures (sheds, detached garages and the like) are to be placed in the floodplain, the following criteria shall be met:
- (a) Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas);
 - (b) Accessory structures shall be designed to have low flood damage potential;
 - (c) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistant to the flow of flood waters;
 - (d) Accessory structures shall be firmly anchored in accordance with subsection (A)(1) above;

- (e) All service facilities such as electrical and heating equipment shall be elevated in accordance with subsection (A)(4) above; and
 - 1. Openings to relieve hydrostatic pressure during a flood shall be provided below regulatory flood protection elevation in conformance with subsection (B)(5).
 - 2. An accessory structure with a footprint less than 150 square feet does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with section 9-6-4(B).

(8) *Additions/improvements.*

- (a) Additions and/or improvements to pre-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure:
 - 1. Are not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure;
 - 2. Are a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (b) Additions to post-FIRM structures with no modifications to the existing structure shall require only the addition to comply with the standards for new construction.
- (c) Additions and/or improvements to post-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure:
 - 1. Are not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction;
 - 2. Are a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (d) Where a fire wall or independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

(C) *Floodways and non-encroachment areas.* Located within special flood hazard areas established in section 9-6-3(B) are areas designated as floodways or non-encroachment areas. Since the floodways and non-encroachment areas are extremely hazardous areas due to the velocity of flood waters which carry debris, potential projectiles and have erosion potential, the following provisions shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during occurrence of the base flood. Such certification and technical data shall be presented to the Local Floodplain Administrator.
- (2) If subsection (C)(1) is satisfied, all development and substantial improvements shall comply with all applicable flood hazard reduction provisions of this chapter.
- (3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured homes (mobile homes) park or subdivision, provided the anchoring and the elevation standards of subsection (B)(3), and the non-encroachment standards of subsection (B)(1) are met.

- (4) Notwithstanding any other provisions of 44 C.F.R. § 60.3, a community may permit encroachments within the adopted regulatory floodway or non-encroachment area that would result in an increase in base flood elevations, provided that the community first applies for a conditional LOMR and floodway revision, fulfills the requirements for such revisions as established under the provisions of 44 C.F.R. § 65.12 of the “National Flood Insurance Program and Related Regulations,” and receives the approval of the Local Floodplain Administrator prior to commencement of the development.

(D) *Standards for floodplains without established base flood elevations.* Within the special flood hazard areas established in section 9-6-3(B) are floodplains where no base flood elevation data has been provided, the following provisions shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of the stream bank equal to five times the width of the stream at the top of bank or 20 feet each side from top of bank, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If subsection (E)(1) is satisfied and base flood elevation is available from other source, all new construction and substantial improvements within such areas shall comply with all applicable provisions of this chapter and shall be elevated or floodproofed in accordance with elevations established in accordance with section 9-6-4(E)(11) and (12). When base flood elevation data is not available from a federal, state or other source, the reference level, including basement, shall be elevated at least two feet above the highest adjacent grade.

(E) *Standards for subdivision, manufactured home park and major development proposals.*

- (1) All proposals shall be consistent with the need to minimize flood damage;
- (2) All proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (3) All proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
- (4) Base flood elevation data shall be provided for all proposals and other proposed development, which is greater than the lesser of 50 lots/manufactured home sites or five acres. Such base flood elevation (BFE) data shall be adopted by reference per section 9-6-3(B) to be utilized in implementing this Code.

(F) *Standards for floodplains with BFE but without established floodways or non-encroachment areas.* Along rivers and streams where base flood elevation (BFE) data is provided but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM or in the FIS, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided, demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(G) *Standards for areas of shallow flooding (AO Zones).* Located within the special flood hazard areas established in section 9-6-3(B) are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply within such areas:

- (1) All new construction and substantial improvements of all structures shall have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least to the regulatory flood protection elevation as defined for the special flood hazard areas where no BFE has been established.

- (2) All new construction and substantial improvements of nonresidential structures shall have the option, in lieu of elevation, to be completely floodproofed together with attendant utilities and sanitary facilities to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as per section 9-6-4(B)(3) and section 9-6-4(B)(2).

(Ord. No. 03-123, passed 12-15-2003)

SEC. 9-6-6 LEGAL STATUTES AND PROVISIONS.

(A) *Effect on rights and liabilities under the existing flood damage prevention ordinance.* This chapter in part is adopted due to re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted June 8, 1978, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this chapter shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the City of Greenville enacted on June 8, 1978, as amended, which are not re-enacted herein are repealed.

(B) *Effect upon outstanding building permits.* Nothing herein contained shall require any change in the plans, construction, size or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Local Floodplain Administrator or his or her authorized agents, before time of passage of this chapter; provided, however, that when construction is not begun under such outstanding permit within a period of 60 days subsequent to passage of this chapter or any revision thereto, construction or use shall be in conformity with the provisions of this chapter.

(Ord. No. 03-123, passed 12-15-2003)

CHAPTER 7: HISTORIC PRESERVATION COMMISSION

Section

9-7-1	Establishment
9-7-2	Definitions
9-7-3	Qualification of members; terms; appointments; general duties
9-7-4	Meetings; attendance
9-7-5	Same; time and date
9-7-6	Same; minutes
9-7-7	Members; rights and privileges
9-7-8	Same; compensation
9-7-9	Rules of procedure; principles and guidelines
9-7-10	Receipt of gifts
9-7-11	Role of City Council
9-7-12	Powers of Preservation Commission
9-7-13	Certificate of appropriateness; required
9-7-14	Same; requirements for issuance
9-7-15	Same; review criteria
9-7-16	Minor works; exempt
9-7-17	Demolition of buildings
9-7-18	Certain changes not prohibited
9-7-18.1	Solar collectors
9-7-19	Ownership of property
9-7-20	Publicly owned buildings and structures
9-7-21	Public meetings and hearings
9-7-22	Enforcement and appeals
9-7-23	Penalties for violations
9-7-24	Extraterritorial provisions

SEC. 9-7-1 ESTABLISHMENT.

There is hereby established a Historic Preservation Commission of Greenville which shall serve jointly as a historic district and a historic landmarks commission for the city under the authority of the North Carolina General Statutes. The Preservation Commission, performing the duties of both a Historic Districts Commission and a historian, shall conform their actions to this chapter and the statutory directive when acting in either capacity.

(1971 Code, § 9-10-1) (Ord. No. 1925, § 1, passed 12-8-1988; Ord. No. 2186, § 1, passed 5-10-1990)

SEC. 9-7-2 DEFINITIONS.

For the purpose of this chapter only, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Alteration. Any change because of construction, repair, maintenance or otherwise to a building located within a historic district or designated as a historic landmark.

Building. Any structure, place or any other construction built for the shelter or enclosure of persons, animals or chattels, or any part of such structure when subdivided by division walls or party walls extending to or above the roof and without openings in the separate walls.

Certificate of appropriateness. A document evidencing approval of the Commission for work proposed in a historic district or to a historic landmark by an applicant.

City. The City of Greenville.

Commission or Preservation Commission. The Historic Preservation Commission of the city.

Commissioners. The members of the Historic Preservation Commission of the city.

Construction. The erection of any on-site improvements on any parcel of ground located within a historic district or on a historic site, whether the site is presently improved, unimproved or hereinafter becomes unimproved by demolition, destruction of the improvements located thereon by fire, windstorm or other casualty.

Demolition. The complete or constructive removal of a building on any site.

Department. The North Carolina Department of Cultural Resources.

Design guidelines or guidelines. Criteria that is considered by the Historic Preservation Commission when considering and deciding the appropriateness of a proposed change in a historic district or to a historic landmark.

Designation. The creation of a historic district or a historic landmark through the passage of an ordinance by the City Council.

Exterior architectural features. Include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material, and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior architectural features" shall be construed to mean the style, material, size and location of all such signs.

Historic district. An area containing buildings, structures or places which have a character and ambience being of special significance in terms of their history, prehistory, architecture, or cultural importance and possess integrity of design, setting, material, feeling and association; and is designated by an ordinance of the City Council.

Historic landmark. Any site, landmark, structure, or artifact which is found to be of special significance in terms of its historical, prehistorical architectural, or cultural importance and possess integrity of design, setting, workmanship, material, feeling and association; and is so designated by ordinance of the City Council.

Ordinary repairs and maintenance. Work done on a building to prevent it from deterioration or to replace any part thereof in order to correct any deterioration, decay or damage to a building or any part thereof in order to restore same as nearly as practical to its condition prior to such deterioration, decay or damage.

Overlay zoning districts. A district that is imposed in addition to those of the underlying district. Developments within overlying zoning districts must conform to the requirements of both zones or the more restrictive of the two.

Rules of procedures. Procedures for organizing the business of the Historic Preservation Commission, and the processing of applications for certificate of appropriateness.

Separate use districts. A section of the city designated in the Zoning Ordinance text and delineated on the zoning map, in which requirements for the use of land and building development standards are prescribed.

(1971 Code, § 9-10-2) (Ord. No. 1925, § 1, passed 12-8-1988; Ord. No. 2186, § 2, passed 5-10-1990)

SEC. 9-7-3 QUALIFICATION OF MEMBERS; TERMS; APPOINTMENTS; GENERAL DUTIES.

(A) Until January 31, 1997, the Commission shall consist of 11 members. Thereafter the Commission shall consist of ten members. All members shall reside within the planning and zoning jurisdiction of the city. In addition, a majority of the members of the Preservation Commission shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields.

(B) Commission members duly appointed and currently serving on the Commission as of the effective date of this chapter may continue to serve for the remainder of that member's current term, and the eligibility of any member for reappointment to a subsequent term shall not be affected. Commission members shall serve overlapping terms of three years, with appointment of replacements or reappointment as provided in subsection (C), below.

(C) (1) The terms of office shall be configured as follows:

- (a) Three members shall be appointed or reappointed for three-year terms in January 1997.
- (b) Three members shall be appointed or reappointed for three-year terms in January 1998.
- (c) Four members shall be appointed or reappointed for three-year terms in January 1999.

(2) The appointments or reappointments for expiring terms shall occur every year thereafter for the terms expiring in that year.

(D) For purposes of taking action on any matter that the Commission is required by law or ordinance to act on, a quorum of the Commission shall consist of five members.

(E) The members of the Historic Preservation Commission shall be appointed by and will serve at the pleasure of the City Council.

(F) The Historic Preservation Commission shall select from among its members a Chairperson and Vice-Chairperson who shall be elected annually by the members.

(G) Upon its first formal meeting, and prior to performing any duties under this chapter or under the authority of the North Carolina General Statutes, the Historic Preservation Commission shall adopt rules of procedure governing the Commission's actions which are not governed by this chapter or the General Statutes.
(1971 Code, § 9-10-3) (Ord. No. 1925, § 1, passed 12-8-1988; Ord. No. 2186, § 3, passed 5-10-1990; Ord. No. 96-107, § 1, passed 11-14-1996)

SEC. 9-7-4 MEETINGS; ATTENDANCE.

Any member of the Historic Preservation Commission who misses three consecutive regularly scheduled meetings or fails to attend 75% of the regularly schedule meetings in a calendar year shall lose his or her status as a member of the Commission and shall be replaced by the City Council pursuant to section 9-7-3 of this chapter. Absence due to sickness, death in the family or other emergencies of like nature shall be recognized as excused absences, as approved by the Chairperson, and shall not affect the member's status on the Commission. In the event of a long illness or any other such cause for prolonged absence, the member shall be replaced.
(1971 Code, § 9-10-4) (Ord. No. 1925, § 1, passed 12-8-1988; Ord. No. 2186, § 4, passed 5-10-1990)

SEC. 9-7-5 SAME; TIME AND DATE.

The Historic Preservation Commission shall establish a meeting time, and shall meet at least quarterly and more often as it shall determine and require.
(1971 Code, § 9-10-5) (Ord. No. 1925, § 1, passed 12-8-1988)

SEC. 9-7-6 SAME; MINUTES.

The Commission shall keep permanent minutes of all its meetings, which shall be a public record. The minutes shall record attendance of its members, its resolutions, findings, recommendations and actions.
(1971 Code, § 9-10-6) (Ord. No. 1925, § 1, passed 12-8-1988)

SEC. 9-7-7 MEMBERS; RIGHTS AND PRIVILEGES.

All members of the Commission shall have equal rights, privileges and duties in all matters, whether they reside within the corporate limits of the city or in the extraterritorial jurisdiction of Greenville.
(1971 Code, § 9-10-7) (Ord. No. 1925, § 1, passed 12-8-1988)

SEC. 9-7-8 SAME; COMPENSATION.

All members of the Commission shall serve without compensation, except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any fund available to the Commission.
(1971 Code, § 9-10-8) (Ord. No. 1925, § 1, passed 12-8-1988)

SEC. 9-7-9 RULES OF PROCEDURE; PRINCIPLES AND GUIDELINES.

The Commission shall adopt rules of procedure for the conduct of its business; and principles and guidelines for new construction, alterations, additions, moving and demolition of designated historic properties and properties in historic districts.
(1971 Code, § 9-10-9) (Ord. No. 1925, § 1, passed 12-8-1988)

SEC. 9-7-10 RECEIPT OF GIFTS.

The City Council shall have the right to accept gifts and donations in the name of the city for historic preservation purposes.
(1971 Code, § 9-10-10) (Ord. No. 1925, § 1, passed 12-8-1988)

SEC. 9-7-11 ROLE OF CITY COUNCIL.

(A) The designation of a historic landmark or district shall be effective through an ordinance passed by the City Council.

(B) Upon compliance with the North Carolina General Statutes, the City Council may adopt and, from time to time, amend or repeal an ordinance designating one or more properties or districts.

(C) No landmark or district shall be recommended for designation unless it is deemed to be of special significance in terms of its history, prehistory, architecture and/or cultural importance. The landmark or district must lie within the planning and zoning jurisdiction of the city.
(1971 Code, § 9-10-14) (Ord. No. 1925, § 1, passed 12-8-1988; Ord. No. 2186, § 6, passed 5-10-1990)

SEC. 9-7-12 POWERS OF PRESERVATION COMMISSION.

The Commission shall be authorized within the planning and zoning jurisdiction of the city to:

(A) Undertake an inventory of landmarks of historical, prehistorical, architectural, and/or cultural significance;

(B) Recommend to the City Council areas to be designated by ordinance as a "historic district;" and individual structures, buildings, sites, areas, or objects to be designated by ordinance as a "historic landmark;"

(C) Recommend to the City Council that the city acquire, by any lawful means, the fee or any lesser included interest, including options to purchase, of landmarks within designated districts or of any such designated landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the landmark by public or private sale, lease or

otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the landmark;

(D) Restore, preserve and operate historic landmarks;

(E) Recommend to the City Council that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area or object as a historic landmark, be revoked or removed;

(F) Conduct an educational program with respect to historic landmarks and districts within its jurisdiction;

(G) Cooperate with the federal, state and local governments in pursuance of the purposes of historic preservation, and to offer or request assistance, guidance or advice concerning matters under its purview or of mutual interest;

(H) Enter, solely in performance of its official duties and only at reasonable times, upon private lands, following written notification, for examination or survey thereof. However, no member, employee or agent of the Commission may enter any private building or structure without the express consent of the owner or occupant thereof;

(I) Prepare and recommend the official adoption of a preservation element as part of the city's Comprehensive Plan;

(J) Review and act upon proposals for alterations, demolitions or new construction within historic districts, or for the alteration or demolition of designated properties;

(K) Recommend to City Council the negotiations with the owner of a building, structure, site, area or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate;

(L) Propose changes to this chapter or any related ordinance and to propose new ordinances or laws relating to historic landmark districts, or to the total programs for the development of the historical resources of the city and its environs;

(M) Give advice to property owners concerning the treatment of the historical and visual characteristics of their properties such as color schemes, garden and landscape features, and minor decorative elements;

(N) Take steps, during the period of postponement of demolition or alteration of any historic landmark, to ascertain what the City Council can or may do to preserve such property, including consultation with private civic groups, interested private citizens and other public boards or agencies and including investigation of potential acquisition by the City Council when the preservation of a given historic landmark is clearly in the interest of the general welfare of the community and the property is of certain historic and architectural significance;

(O) Establish guidelines under which the Director of Community Development, or his or her designee, may approve minor works on behalf of the Commission. No application shall be denied without first being considered by the Commission;

(P) Conduct public hearings on applications for certificate of appropriateness where the Commission deems that such a hearing is necessary;

(Q) Assist the city staff in obtaining the services of private consultants to aid in carrying out programs of research or analysis;

(R) Publish information about, or otherwise inform the public of any matters pertinent to its purview, duties, organization, procedures, responsibilities, functions or requirements as its budget may allow; and

(S) Report violations of this chapter or related ordinances with respect to historic properties to the Chief Building Inspector.

(1971 Code, § 9-10-15) (Ord. No. 1925, § 1, passed 12-8-1988; Ord. No. 2186, § 7, passed 5-10-1990; Ord. No. 06-75, § 2, passed 8-10-2006)

SEC. 9-7-13 CERTIFICATE OF APPROPRIATENESS; REQUIRED.(A) *Generally.*

- (1) After the designation of a historic landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on the designated landmark or district until after an application for a certificate of appropriateness has been submitted to and approved by the Historic Preservation Commission. The Commission shall have no jurisdiction over the interior arrangement, except as provided in subsection (B) below, and shall take no action except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs or other significant features which would be incongruous with the special character of the historic landmark or historic district.
- (2) The certificate of appropriateness shall be issued prior to the issuance of a building or other permit, and shall be required whether or not a building or other permit is required.
- (3) The discontinuance of work or the lack of progress toward achieving compliance with a certificate of appropriateness for a period of six months shall render the certificate null and void, and application shall be made for a new certificate before work can recommence.
- (4) The issuance of a certificate of appropriateness does not run with the land and cannot be conveyed in the sale of property.

(B) *Interiors.* The Commission may have jurisdiction over the interior, but shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned historic landmarks, and in privately owned historic landmarks for which consent for interior review has been given by the owner. The consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the Register of Deeds of the county and indexed according to the name of the owner of the landmark in the grantee and grantor indexes. The ordinance designating such interior shall specify the interior features to be covered and the nature of the Commission's jurisdiction over the interior.

(C) *Public utilities.* The city and all public utility companies shall be required to obtain a certificate of appropriateness prior to initiating work in a historic district for any changes in the character of street paving, sidewalks, trees, utility installations, lighting, walls, fences, structures and buildings on property, easements or streets owned or franchised by the city or public utility companies.

(1971 Code, § 9-10-17) (Ord. No. 1925, § 1, passed 12-8-1988; Ord. No. 2186, § 9, passed 5-10-1990)

SEC. 9-7-14 SAME; REQUIREMENTS FOR ISSUANCE.

(A) *Application submitted to appropriate administrative official.* An application for a certificate of appropriateness shall be obtained from and, when completed, filed with the Director of Community Development or designee in the Community Development Department.

(B) *Contents of application.*

- (1) The application shall, in accordance with the Historic Preservation Commission's rules of procedure, contain data that is reasonably necessary to determine the nature of the application. An application for a certificate of appropriateness shall not be considered complete until all required data has been submitted.
- (2) Nothing shall prevent the applicant from filing with the application additional relevant information bearing on the application.

(C) *Notification of affected property owners.* Prior to any action taken on a certificate of appropriateness, the owners of any landmark likely to be materially affected by the application shall be notified in writing, and the applicant and such owners shall be given an opportunity to be heard.

(D) *Public hearing.* When an application is presented to the Historic Preservation Commission a public hearing may be held when deemed necessary.

(E) *Action on an application.*

- (1) The action on an application shall be approval, approval with modifications, or denial.
- (2) Prior to any action on an application, the review criteria in section 9-7-15 and the Commission's design guidelines shall be used to make findings of fact indicating the extent to which the application is or is not congruous with the historic aspects of the designated landmark or district.
- (3) All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time as defined by the rules of procedure. As part of this review procedure, the Commission may view the premises and seek advice from the Department of Cultural Resources or other such expert advice as it may deem necessary under the circumstances.

(F) *Appeal.*

- (1) An appeal may be taken to the Board of Adjustment from the Commission's action in granting or denying any certificate, which appeal:
 - (a) May be taken by any aggrieved party;
 - (b) Shall be taken within the time prescribed by the Commission's rules of procedure; and
 - (c) Shall be in the nature of certiorari.
- (2) Any appeal from the Board of Adjustment's decision in any such case shall be heard by the Superior Court of Pitt County as provided by applicable laws.

(G) *Submission of new application.* If a certificate of appropriateness is not issued, a new application affecting the same landmark may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration or moving.

(1971 Code, § 9-10-18) (Ord. No. 1925, § 1, passed 12-8-1988; Ord. No. 2186, § 10, passed 5-10-1990)

SEC. 9-7-15 SAME; REVIEW CRITERIA.

(A) *Intent.*

- (1) It is the intent of these criteria to ensure, insofar as possible, that changes to a designated landmark in a historic district shall be in harmony with the reasons for designation.
- (2) When granting a certificate of appropriateness, the Commission shall take into account the historic or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure as well as the effect of such change or additions upon other structures in the vicinity. In a historic district it is not the intention of these guidelines to require the reconstruction or restoration of individual or original buildings or prohibit the demolition or removal of same or to impose architectural styles from particular historic periods. In considering new construction in a historic district, the Commission may encourage contemporary design which is harmonious with the character of the district.

(B) *Form and appearance.*

- (1) The Historic Preservation Commission shall adopt detailed guidelines which will take into account the historic and architectural significance and visual and historic elements for each designated historic district.
- (2) The following criteria shall be considered, when relevant, along with other appropriate guidelines including “The Secretary of the Interior’s Standards for Rehabilitating Historic Buildings,” in reviewing applications for a certificate of appropriateness:
 - (a) Lot coverage, defined as the percentage of lot area covered by primary structures;
 - (b) Setback, defined as the distance from the lot lines to the building(s);
 - (c) Building height;
 - (d) Spacing of buildings, defined as the distance between adjacent buildings;
 - (e) Building materials;
 - (f) Proportion, shape, positioning, location, pattern and sizes of any elements of fenestration;
 - (g) Surface textures;
 - (h) Roof shapes, forms and materials;
 - (i) Use of local or regional architectural traditions;
 - (j) General form and proportions of buildings and structures, and relationship of any additions to the main structure;
 - (k) Expression of architectural detailing, such as lintels, cornices, brick bond, and foundation materials;
 - (l) Orientation of the building to the street;
 - (m) Scale, determined by the size of the units of construction and architectural details in relation to the human scale and also by the relationship of the building mass to adjoining open space and nearby buildings and structures;
 - (n) Proportion of width to height of the total building facade;
 - (o) Archaeological sites and resources association with standing structures;
 - (p) Major landscaping efforts that would impact known archaeological sites;
 - (q) Appurtenant fixtures and other features, such as lighting;
 - (r) Structural condition and soundness;
 - (s) Walls, physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses, building facades, or combinations of these;
 - (t) Maintenance of pedestrian scale and orientation as well as provision for safe pedestrian movement; and
 - (u) Other exterior construction, including surfaced areas and signs.

(C) *Conditions to certain approvals.* In the event that the Historic Preservation Commission, in reviewing an owner's proposed plans, shall find that a building or structure for which a building permit is required is to be an authentic restoration or reconstruction of a building or structure which existed at the same location but does not meet zoning requirements, the building or structure may be authorized to be restored or reconstructed at the same location where the original building or structure was located, provided the Board of Adjustment authorizes the restoration or reconstruction and no use other than that permitted in the district in which it is located is made of the property. Such conditions as may be set by the Historic Preservation Commission and the Zoning Board of Adjustment shall be conditions for the issuance of the building permit. (1971 Code, § 9-10-19) (Ord. No. 1925, § 1, passed 12-8-1988)

SEC. 9-7-16 MINOR WORKS; EXEMPT.

A certificate of appropriateness application, when determined to involve a minor work, may be reviewed and approved by an administrative official according to review criteria and guidelines. Minor works will be specified in the design guidelines. (1971 Code, § 9-10-20) (Ord. No. 1925, § 1, passed 12-8-1988)

SEC. 9-7-17 DEMOLITION OF BUILDINGS.

(A) *Generally.* An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within a designated district may not be denied. However, the effective date of such certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the Historic Preservation Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from the property by virtue of the delay. During this period the Historic Preservation Commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the Historic Preservation Commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of the period and authorize earlier demolition, or removal.

(B) *Delay of demolition of properties or properties within district in process of being designated.* If the Historic Preservation Commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the City Council, the demolition or destruction of any building, site or structure located on the property of the proposed landmark or in the proposed district may be delayed by the Historic Preservation Commission for a period of up to 180 days or until the City Council takes final action on the designation, whichever occurs first.

(C) *Antidemolition by neglect ordinance.* The City Council may enact an ordinance to prevent the demolition of any designated landmark or any building, structure or site within a designated district due to neglect. Such ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.

(D) *Denial of demolition of statewide significant landmarks.* An application for a certificate of appropriateness authorizing the demolition or destruction of a building, structure or site determined by the State Historic Preservation Officer as having statewide significance, as defined in the criteria of the National Register of Historic Places, may be denied except where the Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial. (1971 Code, § 9-10-20.1) (Ord. No. 2186, § 11, passed 5-10-1990; Ord. No. 2454, § 1, passed 5-14-1992)

SEC. 9-7-18 CERTAIN CHANGES NOT PROHIBITED.

Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of a historic landmark or in a historic district which does not involve a change in design, materials or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration or demolition of such feature which the Building Inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent a property owner from making the use of his or her property not prohibited by other

statutes, ordinances or regulations. Also, nothing herein shall prevent the maintenance or, in the event of an emergency, the immediate restoration of any existing above-ground utility structure without the approval of the Preservation Commission. (1971 Code, § 9-10-21) (Ord. No. 1925, § 1, passed 12-8-1988; Ord. No. 2186, § 12, passed 5-10-1990)

SEC 9-7-18.1 SOLAR COLLECTORS.

(A) Except as provided under subsection (B), the Commission shall not prohibit the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property, and no person shall be denied permission to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. As used in this section, the term *residential property* means property where the predominant use is for residential purposes.

(B) No solar collector described in subsection (A) shall be allowed that is visible by a person on the ground:

(1) On the façade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or

(3) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

(C) Additional requirements, standards and restrictions concerning the installation and use of a solar collector shall be set forth in the "Historic Preservation Commission's Design Guidelines". (Ord. No. 10-50, § 1, 6-10-2010)

SEC. 9-7-19 OWNERSHIP OF PROPERTY.

All lands, buildings, structures, sites, areas or objects shall be acquired in the name of the city unless otherwise provided by the City Council. So long as owned by the city, historic landmarks may be maintained by or under the supervision and control of the city. (1971 Code, § 9-10-22) (Ord. No. 1925, § 1, passed 12-8-1988)

SEC. 9-7-20 PUBLICLY OWNED BUILDINGS AND STRUCTURES.

All provisions of this chapter and the General Statutes are hereby made applicable to the construction, use, alteration, moving and demolition by the state, its political subdivisions, agencies and instrumentalities, provided that they shall not apply to the interior of buildings or structures owned by the state. The Secretary of the Interior's standards for rehabilitation and guidelines for rehabilitating historic buildings shall be the sole guidelines used in reviewing applications of the state for certificate of appropriateness. (1971 Code, § 9-10-23) (Ord. No. 1925, § 1, passed 12-8-1988; Ord. No. 2186, § 13, passed 5-10-1990)

SEC. 9-7-21 PUBLIC MEETINGS AND HEARINGS.

All meetings and hearings of the Commission shall be in accordance with the rules of procedure and the North Carolina Open Meeting Law. (1971 Code, § 9-10-24) (Ord. No. 1925, § 1, passed 12-8-1988; Ord. No. 2186, § 14, passed 5-10-1990)

SEC. 9-7-22 ENFORCEMENT AND APPEALS.

The Zoning Enforcement Officer shall be responsible for the enforcement of the chapter. The zoning enforcement officer may provide for the enforcement of this chapter by means of withholding permits and/or issuance of civil citation(s) in accordance with Title 9, Chapter 4, Article U, section 9-4-356 of the City Code. He or she may provide for enforcement by instituting injunction, mandamus or other appropriate action or proceeding to prevent unlawful erection, construction, reconstruction, alteration, conversion, moving, maintenance or use; to correct or abate the violation; or to prevent the occupancy of the building, structure or land. If a decision of the Zoning Enforcement Officer is questioned, the aggrieved person may appeal the decision to the Board of Adjustment in accordance with applicable procedure and law. (1971 Code, § 9-10-25) (Ord. No. 99-18, § 1, passed 2-11-1999)

SEC. 9-7-23 PENALTIES FOR VIOLATIONS.

Any violation of this chapter shall be considered a violation of the zoning regulations and shall subject the offender to a civil penalty and other appropriate equitable action in accordance with Title 9, Chapter 4, Article U, section 9-4-356 of the City Code. (1971 Code, § 9-10-26) (Ord. No. 99-18, § 2, passed 2-11-1999)

SEC. 9-7-24 EXTRATERRITORIAL PROVISIONS.

The provisions of this chapter shall be applicable only within the planning and zoning jurisdiction of the city. (1971 Code, § 9-10-27) (Ord. No. 1925, § 1, passed 12-8-1988)

CHAPTER 8: SOIL EROSION AND SEDIMENTATION CONTROL

Section

9-8-1	Title
9-8-2	Purposes
9-8-3	Definitions
9-8-4	Scope; exclusions
9-8-5	General requirements
9-8-6	Basic control objectives
9-8-7	Mandatory standards for land-disturbing activity
9-8-8	Design and performance standards
9-8-9	Stormwater outlet protection
9-8-10	Borrow and waste areas
9-8-11	Access and haul roads
9-8-12	Operations in lakes or natural watercourses
9-8-13	Responsibility for maintenance
9-8-14	Additional measures
9-8-15	Existing uncovered areas
9-8-16	Permits
9-8-17	Erosion and sedimentation control plans
9-8-18	Appeals
9-8-19	Inspections and investigations
9-8-20	Penalties
9-8-21	Injunctive relief
9-8-22	Restoration of areas affected by failure to comply
9-8-23	Severability

SEC. 9-8-1 TITLE.

This chapter may be cited as “The City of Greenville Soil Erosion and Sedimentation Control Ordinance” or “this chapter.”

(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-2 PURPOSES.

This chapter is adopted for the purpose of:

(A) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation within the city limits of the City of Greenville and the extraterritorial jurisdiction of the city; and

(B) Establishing procedures through which these purposes can be fulfilled.

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 06-50, § 1, passed 6-8-2006)

SEC. 9-8-3 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Accelerated erosion. Any increase over the rate of natural erosion as a result of land-disturbing activities.

Act. The North Carolina Sedimentation Pollution Control Act of 1973, being G.S. 113A-50 *et seq.*, and all rules and orders adopted pursuant to it.

Active construction. Activities which contribute directly to the building of facilities including land-disturbing activities for roads, parking lots, footings and the like.

Adequate erosion and control measure, structure or device. One which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

Affiliate. A person who directly, or indirectly through one or more intermediaries' control, is controlled by or is under common control of another person.

Being conducted. A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

Borrow. Fill material which is required for on-site construction and is obtained from other locations.

Buffer zone. The strip of land adjacent to a lake or natural watercourse.

Coastal counties. The following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Tyrrell and Washington.

Commission. The City of Greenville Planning and Zoning Commission.

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

Denuded. The removal of ground cover from, on or above the soil surface.

Department. The North Carolina Department of Environment, Health, and Natural Resources.

Director. The Director of the Division of Land Resources of the Department of Environment, Health, and Natural Resources.

Discharge point. That point at which runoff leaves a tract of land.

District. The Pitt County Soil and Water Conservation District created pursuant to G.S. Chapter 139 of the North Carolina General Statutes.

Drainage easement. A minimum strip of land reserved for conveyance of stormwater generally located along the rear or side lot lines but may cross lots at such points that will not pose a hazard to persons or property.

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

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

Extraterritorial jurisdiction. That territory surrounding the corporate limits of the city over which the city exercises its planning and zoning authorities as established by action of the City Council on June 26, 1972 and subsequently amended.

Ground cover. Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

High quality water (HQW) zones. Areas in the Coastal Counties that are within 575 feet of high quality waters and for the remainder of the state areas that are within one mile and drain to HQWs.

High quality waters. Those classified as such in 15A NCAC 2B.0101(e)(5), General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. Chapter 150B, Article 2A.

Lake or natural watercourse. 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. Any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Land-disturbing permit. The approval document allowing land-disturbing activities to be initiated. A project may be developed in phases with separate permits for each phase.

Local government. 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. Wearing away of the earth's surface by water, wind or other natural agents under natural environmental conditions undisturbed by mankind.

Parent. An affiliate that directly, or indirectly through one or more intermediaries, controls another person.

Person. 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 conducting land-disturbing activity. Any person who may be held responsible for a violation unless expressly provided otherwise by this chapter, the Act, or any order adopted pursuant to this chapter or the Act.

Person responsible for the violation. As used in this chapter and G.S. 113A-64, means:

- (1) The developer or other person who has or holds himself or herself out as having financial or operational control over the land-disturbing activity; or
- (2) The landowner or person in possession or control of the land when he or she has directly or indirectly allowed the land-disturbing activity or has benefitted from it, or he or she has failed to comply with any provision of this chapter, the Act or any order adopted pursuant to this chapter or the Act as imposes a duty upon him or her.

Phase of grading. One of two types of grading, rough or fine.

Plan. Erosion and Sedimentation Control Plan.

Protective cover. Natural or artificial ground cover of grass, trees, shrubs or mulch sufficient to reduce erosion potential.

Receiving watercourse. A lake, natural watercourse, or other natural or man-made area into which stormwater runoff flows from a land-disturbing activity.

Sediment. 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. 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 lake or natural watercourse.

Siltation. Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constricted and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited or is in suspension in water.

Special flood hazard area. The land located within the floodplain subject to a 1% or greater chance of flooding in any given year and subject to the conditions of Title 9, Chapter 6 of the City Code, Flood Damage Prevention.

Storm drainage facilities. The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

Stormwater runoff. The direct runoff of water resulting from precipitation in any form.

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

Tract. All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

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

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

Undertaken. 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. The average "velocity" of flow through the cross-section of the main channel at the peak flow of the storm of interest. 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.

Wastes. Surplus materials resulting from on-site construction and disposed of at other locations.

Working days. Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 99-119, § 1, passed 9-9-1999)

SEC. 9-8-4 SCOPE; EXCLUSIONS.

This chapter shall not apply to the following land-disturbing activities:

(A) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to mankind, including but not limited to:

- (1) Forages and sod crops, grains and feed crops, tobacco, cotton and peanuts;
- (2) Dairy animals and dairy products;
- (3) Poultry and poultry products;
- (4) Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats;
- (5) Bees and apiary products; and

(6) Fur-producing animals.

(B) Activities undertaken on forest land for the production and harvesting of timber and timber products and which are conducted in accordance with best management practices set out in *Forest Practice Guidelines Related to Water Quality* as adopted by the Department. If land-disturbing activity undertaken on forest land for the production and harvesting of timber and timber products is not conducted in accordance with *Forest Practice Guidelines Related to Water Quality*, the provisions of this chapter shall apply to such activity and any related land-disturbing activity on the tract; and

(C) Activities for which a permit is required under the Mining Act of 1971, being G.S. Chapter 74, Article 7 of the General Statutes;

(D) Land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a); and

(E) For the duration of an emergency, activities essential to protect human life.
(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-5 GENERAL REQUIREMENTS.

(A) *Plan and permit required.* No person shall initiate any land-disturbing activity which uncovers more than one acre without having an erosion control plan and land-disturbing permit approved by the city. Additionally, no person shall initiate any land-disturbing activity greater than 5,000 square feet without having a land-disturbing permit approved by the city. Furthermore, no person shall initiate land-disturbing activity of any size within the special flood hazard area without first obtaining a land-disturbing permit and an approved sedimentation and erosion control plan meeting the requirements of this chapter and Chapter 6 entitled "Flood Damage Prevention."
(Ord. No. 99-119, §§ 2-6, passed 9-9-1999)

(B) *Protection of property.* Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by that activity.

(C) *More restrictive rules shall apply.* Whenever conflicts exist between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply.
(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-6 BASIC CONTROL OBJECTIVES.

(A) An erosion and sedimentation control plan may be disapproved pursuant to section 9-8-17 of this chapter if the plan fails to address the following control objectives:

- (1) *Identify critical areas.* On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention;
- (2) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time;
- (3) *Limit 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 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 sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage; and

- (6) *Manage 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 point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(B) When deemed necessary by the approving authority, a preconstruction conference may be required.
(Ord. No. 98-7, passed 1-8-1998; Ord. No. 00-155, §§ 1, 2, passed 12-14-2000)

SEC. 9-8-7 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:

(A) *Buffer zone.*

- (1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity, provided that this subsection shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over or under a lake or natural watercourse.
- (2) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25% of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(B) *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 devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices or structures sufficient to restrain erosion.

(Ord. No. 99-119, § 8, passed 9-9-1999; Ord. No. 11-018, § 1, passed 4-11-2011)

(C) *Ground cover.* Whenever land-disturbing activity is undertaken on a tract in excess of 5,000 square feet, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in section 9-8-8(B)(5), provisions for ground cover sufficient to restrain erosion must be accomplished within 21 calendar days following completion of any phase of grading.
(Ord. No. 99-119, § 10, passed 9-9-1999; Ord. No. 00-155, §§ 3, 4, passed 12-14-2000; Ord. No. 06-50, § 2, passed 6-8-2006)

(D) *Prior plan approval.* No person shall initiate any land-disturbing activity on a tract if more than one acre is to be uncovered unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with and approved by the city.

(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-8 DESIGN AND PERFORMANCE STANDARDS.

(A) Except as provided in subsection (B)(2) of this section, erosion and sedimentation control measures, structures and devices shall be so planned, designed and constructed as to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's *National Engineering Field Manual for Conservation Practices*, or other acceptable calculation procedures.

(B) In high quality water (HQW) zones the following design standards shall apply:

- (1) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.
- (2) Erosion and sedimentation control measures, structures and devices within HQW zones shall be so planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's *National Engineering Field Manual for Conservation Practices*, or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
- (3) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.04 mm) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's *National Engineering field Manual for Conservation Practices* or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
- (4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical (2:1) if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.
- (5) Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-9 STORMWATER OUTLET PROTECTION.

- (A) (1) Persons shall conduct land-disturbing activity so that the post construction velocity of the ten-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - (a) The velocity established by the table in subsection (D) of this section; or
 - (b) The velocity of the ten-year storm runoff in the receiving watercourse prior to development.
- (2) If conditions (1)(a) or (b) of this subsection (A) cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%.

(B) *Acceptable management measures.* Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Commission recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (2) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;

- (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge (these may range from simple rip-rapped sections to complex structures); and
- (4) Protect watercourses subject to accelerated erosion by improving cross-sections and/or providing erosion resistant lining.

(C) *Exceptions.* This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

(D) *Table.* The following is a table for maximum permissible velocity for stormwater discharges:

Material	<u>Maximum Permissible</u> <u>Velocities for</u>	
	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (non colloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

(Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.)

(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-10 BORROW AND WASTE AREAS.

(A) When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated.

(B) When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

(Ord. No. 98-7, passed 1-8-1998)

Statutory reference:

State Mining Act of 1971, see G.S. 74-46 through 74-68

SEC. 9-8-11 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 that activity.

(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-12 OPERATIONS IN LAKES OR NATURAL WATERCOURSES.

Land-disturbing activity in connection with construction in, on, over or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. 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 necessary justification for significant alteration to flow characteristic is provided.

(Ord. No. 06-50, § 3, passed 6-8-2006)

SEC. 9-8-13 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 provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-14 ADDITIONAL MEASURES.

Whenever the city determines that significant sedimentation is occurring as a result of a land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-15 EXISTING UNCOVERED AREAS.

(A) All uncovered areas existing on December 11, 1985, which resulted from land-disturbing activity, exceed one acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation shall be provided with a ground cover or other protective measures, structures or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(B) The city will serve upon the landowner or other person in possession or control of the land a written notice of violation by registered or certified mail, return receipt requested or other means authorized under G.S. 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which the measures must be completed. In determining the measures required and time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits for compliance.

(Ord. No. 06-50, § 4, passed 6-8-2006)

(C) The city reserves the right to require preparation and approval of an erosion control plan in any instance wherein extensive control measures are required.

(D) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-16 PERMITS.

(A) *Required; exceptions.* No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a permit therefor from the city, office of the City Engineer, except that no permit shall be required for any land-disturbing activity as identified in section 9-8-4.

(Ord. No. 06-50, § 5, passed 6-8-2006)

(B) *Fees.* A fee established in accordance with the *Manual of Fees* adopted by the City Council shall be submitted with each application for a land-disturbing permit.

(C) *Prerequisite to issue of building permit.* No building permit shall be issued for a structure until the Building Inspector has obtained evidence that a valid land-disturbing permit has been obtained.

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 99-119, § 11-14, passed 9-9-1999)

SEC. 9-8-17 EROSION AND SEDIMENTATION CONTROL PLANS.

(A) An erosion control plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract comprising more than one acre, if more than one acre is to be uncovered. The plan shall be filed with the city, office of the City Engineer and the Pitt County Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

(B) Persons conducting land-disturbing activity on a tract which covers one or more acres shall file three copies of the erosion control plan with the office of the City Engineer at least three days prior to beginning the activity and shall keep another copy of the approved plan on file at the job site. After approving the plan, if the office of the City Engineer, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the office of the City Engineer will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.

(C) Erosion control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her 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 North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this chapter or rules or orders adopted or issued pursuant to this chapter.

(D) The Pitt County Soil and Water Conservation District shall review the plan and submit any comments or recommendations to the office of the City Engineer within 20 days after the Soil and Water Conservation District received the erosion control plan, or within any shorter period of time as may be agreed upon by the Soil and Water Conservation District and the office of the City Engineer. Failure of the Soil and Water Conservation District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the plan.

(E) The office of the City Engineer will review each complete plan submitted to it and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. The office of the City Engineer shall condition approval of a draft erosion control plan upon the applicant's compliance with federal and state water quality laws, regulations and rules. Failure to approve, or disapprove, approve with performance reservations, or approve with modifications a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. Disapproval of a plan or a revised erosion control plan must specifically state in writing the reasons for the disapproval. The office of City Engineer must approve or deny a revised plan within 15 days of receipt, or it is deemed to be approved. If following commencement of a land-disturbing activity pursuant to an approved plan, the office of City Engineer determines that the plan is inadequate to meet the requirements of this chapter, the office of City Engineer may require any revisions as are necessary to comply with this chapter. Failure to approve, approve with modifications or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan. (Ord. No. 00-155, §§ 5-6, passed 12-14-2000)

(F) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1 *et seq.*) shall be deemed incomplete until a complete environmental document is available for review. The city shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to subsection (E) of this section shall not begin until a complete environmental document is available for review.

(G) The plan required by this section 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 office of the City Engineer, on request.

(H) An erosion control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to the Act and has not complied with the notice within the time specified in 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;
- (4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act. For purposes of this subsection (H) an applicant's record may be considered for only the two years prior to the application date; or
- (5) If implementation would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters under G.S. 113A-61(b1).

(Ord. No. 06-50, §§ 6-8, passed 6-8-2006)

(I) Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as the amendment is approved by the office of City Engineer, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(J) Any person engaged in land-disturbing activity who fails to file a sedimentation and erosion control plan and obtain a land-disturbing permit in accordance with this chapter, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this chapter.

(Ord. No. 99-119, § 15, passed 9-9-1999)

(K) An approved land-disturbing permit and/or erosion control plan shall be valid for a period of two years from the date of approval.

(Ord. No. 99-119, § 16, passed 9-9-1999)

(L) A copy of the erosion control plan for any land-disturbing activity that involves the utilization of ditches for the purpose of dewatering or lowering the water table must be forwarded to the Director of the Division of Water Quality.

(Ord. No. 00-155, § 7, passed 12-14-2000)

(M) No person may initiate a land-disturbing activity until notifying the office of the City Engineer of the date that the land-disturbing activity will begin.

(Ord. No. 00-155, § 7, passed 12-14-2000)

(N) A plan issued under this article shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan should be kept on file at the job site.

(Ord. No. 06-50, § 9, passed 6-8-2006)

(O) The City Engineer shall only approve a plan upon determining that it complies with all applicable state and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The City Engineer shall condition approval of plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The City Engineer may establish an expiration date, not to exceed three years, for plans approved under this chapter.

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 06-50, § 9, passed 6-8-2006)

SEC. 9-8-18 APPEALS.

(A) The disapproval or modifications of any proposed plan by the office of City Engineer shall entitle the person submitting the plan to a public hearing, if the person submits written demand to the City Manager for a hearing within 15 days after receipt of written notice of disapproval or modification.

(B) Hearings held pursuant to this section shall be conducted by the Planning and Zoning Commission within 45 days after the date of the receipt of the written demand for a public hearing. The date of the public hearing shall be advertised once a week for two successive calendar weeks in a newspaper having general circulation. The notice shall be published the first time not less than 15 days nor more than 25 days before the date fixed for the hearing.

(C) The applicant requesting a public hearing under this section will be charged for the exact cost of the advertising charges plus \$5.

(D) The Planning and Zoning Commission will render its final decision on any erosion control plan upon which a hearing is requested within 45 days of conducting the hearings.

(E) If the Planning and Zoning Commission upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the local government's decision to the North Carolina Sedimentation Control Commission as provided in G.S. 113A-61(c) of the General Statutes of North Carolina and Title 15A, NCAC 4B.0118(b).

(F) In the event that an erosion control plan is disapproved pursuant to section 9-8-17(H), the city shall notify the Director of Division of Land Resources of such disapproval within ten days. The city shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the city's disapproval of the plan pursuant to section 9-8-17(H) directly to the Commission.

(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-19 INSPECTIONS AND INVESTIGATIONS.

(A) The City Engineer and other appropriate officials of the city will periodically inspect land-disturbing activities to ensure compliance with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine 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 plan approval.

(B) No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of the city while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

(C) If 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; a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. The notice shall specify a date by which the person must comply with this chapter, or rules or orders adopted pursuant to this chapter, and inform the person of the actions that need

to be taken to comply with this chapter, or rules, or orders adopted pursuant to this chapter. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his or her official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this chapter.

(D) The city shall have the power to conduct such investigations as it may reasonably deem necessary to carry out its 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.

(E) The city shall also have the power to require written statements or the filing of reports under oath with respect to pertinent questions relating to land-disturbing activity.
(Ord. No. 98-7, passed 1-8-1998)

SEC. 9-8-20 PENALTIES.

(A) Any person who violates any of the provisions 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. The maximum civil penalty for a violation, other than a stop-work order issued under G.S. 113A-65.1, is \$5,000 per day. The maximum civil penalty for a violation of a stop-work order is \$5,000. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in section 9-8-19(C). A civil penalty may be assessed from the date of the violation. 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 penalty. Each day of continuing violation shall constitute a separate violation. A person may also be assessed a one-time civil penalty of up to \$5,000 for the day the violation is first detected.
(Ord. No. 00-155, §§ 8-10, passed 12-14-2000)

(B) The person responsible for the violation of this chapter shall be subject to a civil penalty in the amount of \$100 to \$5,000 per day maximum for the first offense, \$250 to \$5,000 per day maximum for the second offense during the life of the project, and \$5,000 per day maximum for the third and subsequent offenses for the life of the project. The offenses shall be considered on a site-by-site basis. The penalty shall be established by the City Engineer, depending on the existence of aggravating and/or mitigating circumstances surrounding the violation. Violations of this type may include but are not limited to the following:

- (1) Grading without a permit issued by the city;
- (2) Grading beyond the limits of an existing grading permit without approval of an amended grading permit;
- (3) Failure to properly install or maintain erosion control measures in accordance with the approved plan so as to prevent off-site sedimentation;
- (4) Failure to retain sediment from leaving a land-disturbing activity, in accordance with the approved plan or other terms, as required by this chapter;
- (5) Failure to restore off-site areas affected by sedimentation during the time limitation established in a notice of violation;
- (6) Any other violation of this chapter which resulted in off-site sedimentation and, in the discretion of the City Engineer, warrants an assessment of a civil penalty;
- (7) Failure to provide an angle on graded slopes sufficient to retain vegetative cover or other adequate erosion control devices or structures or failure to plant or otherwise provide with ground cover, devices or structures sufficient to restrain erosion within 15 working days of completion of any phase of grading on slopes left exposed;

- (8) Failure to provide a ground cover sufficient to prevent erosion within 30 working days or 120 calendar days, following completion of construction or development, whichever period is shorter;
- (9) Failure to submit to the office of 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;
- (10) Failure to retain a buffer zone of sufficient width along a lake or natural watercourse to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity;
- (11) Failure to schedule and conduct a preconstruction meeting prior to any land-disturbing activity, as required on the approved plan; and/or
- (12) Any other action that constituted a violation of this chapter.

(Ord. No. 00-155, § 11, passed 12-14-2000; Ord. No. 06-50, § 10, passed 6-8-2006)

(C) In determining the amount of the civil penalty, the City Engineer shall consider the following factors: the degree and extent of harm caused by the violation; the risk to receiving watercourses; the cost of rectifying the damage; whether the violator saved money by noncompliance; whether the violator took reasonable measures to comply with the notice of violation; whether the violation was committed willfully after being informed of the potential violation; and the prior record of the violator in complying or failing to comply with this chapter. The City Engineer is authorized to reduce the amount of the per diem penalty set out in subsection (B) above to take into account any relevant mitigating factors.

(Ord. No. 06-50, § 11, passed 6-8-2006)

(D) Notwithstanding any other provision of this chapter, no required time period need be given for compliance for failure to submit an erosion control plan and land-disturbing permit for greater than one acre before a land-disturbing activity occurs and the penalty for the commencement of the land-disturbing activity without submittal of such plan and permit shall be a minimum of \$500 and a maximum of \$5,000, if warranted, for the land-disturbing activity in question.

(Ord. No. 06-50, § 12, passed 6-8-2006)

(E) Any person who fails to protect adjacent properties from pollutants shall be subject to a civil action as provided in section 9-8-21. Civil penalties for pollutants leaving the construction site may be assessed based on those factors listed in subsection (C) of this section.

(Ord. No. 06-50, § 13, passed 6-8-2006)

(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 subsection (G). If a violator does not pay a civil penalty assessed by the City Engineer within 45 days after it is due or does not request a hearing as provided in subsection (G), the City Engineer shall request the City Attorney to institute a civil action to recover the amount of the assessment. The civil action may be brought in Pitt County Superior Court or in the Superior Court for the county where the violator's residence or principal place of business is located.

(G) A violator may contest the assessment of a civil penalty by submitting a written request for a review of the assessment by the Director of Public Works to the City Engineer within 15 days after receipt of the notice of assessment. Upon receipt of the written request, the City Engineer shall confer with the Director of Public Works concerning the civil penalty; and after the conference, the Director of Public Works shall notify the violator within ten days after receipt of the written request for a review whether the penalty has been upheld or modified. If the violator is not satisfied with the action of the Director of Public Works, the violator may further contest the assessment by submitting a written demand for a public hearing before the Board of Adjustment to the City Engineer and the Community Development Director within 45 days after receipt of the initial notice of assessment from the City Engineer. A hearing on a civil penalty shall be conducted by the Board of Adjustment within 45 days after receipt of the written demand for the hearing. The Board of Adjustment shall make its decision to uphold or modify the civil penalty within 30 days after the date of the hearing. An appeal from the decision of the Board of Adjustment shall be to the Superior Court of Pitt County.

(H) 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.

(I) Civil penalties collected pursuant to this chapter shall be credited to the Civil Penalty and Forfeiture Fund.
(Ord. No. 06-50, § 14, passed 6-8-2006)

(J) Any person who knowingly or willfully violates any provisions 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.

(K) A violation of this chapter that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under North Carolina G.S. 14-4, but instead shall be subject to the civil penalties provided in this section.
(Ord. No. 98-7, passed 1-8-1998; Ord. No. 99-119, § 17, passed 9-9-1999)

SEC. 9-8-21 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 rule or order adopted or issued pursuant to this chapter or any term, condition or provision of an approved erosion control plan, it may, either before or after institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the city for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Pitt County.

(B) Upon determination by a court that an alleged violation is occurring or is threatened the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this chapter.
(Ord. No. 98-7, passed 1-8-1998; Ord. No. 99-119, §§ 19, 20, passed 9-9-1999)

SEC. 9-8-22 RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY.

The City Engineer may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), 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 or criminal penalty or injunctive relief authorized under this chapter.
(Ord. No. 98-7, passed 1-8-1998; Ord. No. 99-119, §§ 21, 22, passed 9-9-1999)

SEC. 9-8-23 SEVERABILITY.

If any section or sections of this chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.
(Ord. No. 98-7, § 1, passed 1-8-1998)

