



# Agenda

## Greenville City Council

February 12, 2009  
7:00 PM  
City Council Chambers  
200 West Fifth Street

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### **I. Call Meeting To Order**

### **II. Invocation - Mayor Pro-Tem Council**

### **III. Pledge of Allegiance**

### **IV. Roll Call**

### **V. Approval of Agenda**

### **VI. Special Recognitions**

- Housing Division, Community Development Department

### **VII. Appointments**

1. Appointments to Boards and Commissions

### **VIII. Old Business**

2. Ordinance requested by Jeremy Spengeman to amend the definition of “conventional restaurant”, for purposes of qualifying as a principal use restaurant under the zoning regulations, to reduce the minimum sales requirement of prepared and/or packaged foods, in a ready-to-consume state, during any month, from more than fifty (50) percent of total gross receipts in all cases to either (i) more than fifty (50) percent of total gross receipts or (ii) has monthly sales of prepared and/or packaged food in a ready-to-consume state in excess of thirty (30) percent of the total gross receipts for such establishment and such sales are not less than seventy-five thousand dollars (\$75,000.00) for such establishment for each quarter-year period of each year, and to include specific criteria for determining which sales can be attributed in the portion of sales of prepared and/or packaged food in a ready-to-consume state in the definitions for conventional restaurant and fast food restaurant

## **IX. New Business**

### **Public Hearings**

3. Ordinance to annex Barfield Properties, LLC property containing 11.5837 acres located along Chapman Drive between its intersections with South Memorial Drive and Whitely Drive
4. Ordinance to annex Gateway West, Phase 1 containing 6.93 acres located at the southwest corner of the intersection of US Highway 264 and Old Stantonsburg Road
5. Department of Housing and Urban Development Proposed 2009-2010 Annual Action Plan

### **Public Comment Period**

- The Public Comment Period is a period reserved for comments by the public. Items that were the subject of a public hearing at this meeting shall not be discussed. A total of 30 minutes is allocated with each individual being allowed no more than 3 minutes. Individuals who registered with the City Clerk to speak will speak in the order registered until the allocated 30 minutes expires. If time remains after all persons who registered have spoken, individuals who did not register will have an opportunity to speak until the allocated 30 minutes expires.

### **Other Items of Business**

6. Resolutions establishing State Legislative Initiatives

## **X. Comments from Mayor and City Council**

## **XI. City Manager's Report**

## **XII. Adjournment**



# City of Greenville, North Carolina

Meeting Date: 2/12/2009  
Time: 7:00 PM

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**Title of Item:** Appointments to Boards and Commissions

**Explanation:** Appointments need to be made to the Affordable Housing Loan Committee, Firefighters' Relief Fund Committee, Public Transportation and Parking Commission, and Sheppard Memorial Library Board.

**Fiscal Note:** No fiscal impact.

**Recommendation:** Make appointments to the Affordable Housing Loan Committee, Firefighters' Relief Fund Committee, Public Transportation and Parking Commission, and Sheppard Memorial Library Board

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[Appointments To Boards and Commissions City Council Meetings Agenda Deadline Material 138519](#)

# Appointments To Boards and Commissions

February 12, 2009

## Affordable Housing Loan Committee

**Council Liaison:** Council Member Rose Glover

| <b>Name</b>   | <b>Current Term</b>    | <b>Reappointment Status</b> | <b>Expiration Date</b> |
|---------------|------------------------|-----------------------------|------------------------|
| Brian Becker  | First term             | Eligible                    | February 2009          |
| Howard Conner | Filling unexpired term | Eligible                    | February 2009          |
| Leslie Cox    | Filling unexpired term | Eligible                    | February 2009          |

## Firefighters' Relief Fund Committee

**Council Liaison:** Not Applicable

| <b>Name</b>   | <b>Current Term</b>  | <b>Reappointment Status</b> | <b>Expiration Date</b> |
|---------------|----------------------|-----------------------------|------------------------|
| Henry McNeese | Appointed by Council | Resigned                    | January 2009           |

## Public Transportation and Parking Commission

**Council Liaison:** Council Member Max Joyner, Jr.

| <b>Name</b>     | <b>Current Term</b>    | <b>Reappointment Status</b> | <b>Expiration Date</b> |
|-----------------|------------------------|-----------------------------|------------------------|
| Don Anderson    | Filling unexpired term | Eligible                    | January 2009           |
| Robert Thompson | Second term            | Ineligible                  | January 2009           |

## Sheppard Memorial Library Board

**Council Liaison:** Council Member Rose Glover

| <b>Name</b>  | <b>Current Term</b> | <b>Reappointment Status</b> | <b>Expiration Date</b> |
|--------------|---------------------|-----------------------------|------------------------|
| William Grau | First term          | Resigned                    | October 2009           |

## Applicants for Affordable Housing Loan Committee

|  |          |                    |           |
|--|----------|--------------------|-----------|
| Cheryl Easter<br>207 Manhattan Street<br>Greenville, NC 27834    | 752-0829 | <b>Application</b> | 3/31/2008 |
| Justin Mullarkey<br>1509 East 5th Street<br>Greenville, NC 27858 | 364-1183 | <b>Application</b> | 1/28/2008 |

# Applicants for Firefighters' Relief Fund Committee

NONE

## Applicants for Public Transportation and Parking Commission

|   |                         |                                     |
|---|-------------------------|-------------------------------------|
| Edna Atkinson<br>202 Haw Drive<br>Greenville, NC 27834                | 752-1468                | <b>Application Date:</b> 9/13/2007  |
| Richard Malloy Barnes<br>208 South Elm Street<br>Greenville, NC 27858 | 752-5278                | <b>Application Date:</b> 6/27/2007  |
| Mary Fedash<br>3223 Meeting Place<br>Greenville, NC 27858             | jmfedash@suddenlink.net | <b>Application Date:</b> 10/20/2008 |
| Zeke Jackson<br>3226 Meeting Place<br>Greenville, NC 27858            | (919) 750-1420          | <b>Application Date:</b> 12/10/2007 |

## Applicants for Sheppard Memorial Library Board

|   |          |                    |            |
|---|----------|--------------------|------------|
| Jennifer Brezina<br>608 Winstead Road<br>Greenville, NC 27834       | 355-5707 | <b>Application</b> | 8/1/2007   |
| Judith Havermann<br>2009-A Cambria Drive<br>Greenville, NC 27834    | 321-1655 | <b>Application</b> | 11/19/2007 |
| J. Scott Johnson<br>2008 Pinecrest Drive<br>Greenville, NC 27858    | 355-0644 | <b>Application</b> | 7/29/2008  |
| Chad Reynolds<br>104 Marion Drive<br>Greenville, NC 27858           | 321-6311 | <b>Application</b> | 9/18/2007  |
| Stuart Rosenstein<br>407 Winchester Drive<br>Greenville, NC 27834   | 321-8436 | <b>Application</b> | 11/18/2006 |
| Ralph Lee Scott<br>309 South Library Street<br>Greenville, NC 27858 | 830-0263 | <b>Application</b> | 8/21/2007  |





# City of Greenville, North Carolina

Meeting Date: 2/12/2009  
Time: 7:00 PM

**Title of Item:**

Ordinance requested by Jeremy Spengeman to amend the definition of “conventional restaurant”, for purposes of qualifying as a principal use restaurant under the zoning regulations, to reduce the minimum sales requirement of prepared and/or packaged foods, in a ready-to-consume state, during any month, from more than fifty (50) percent of total gross receipts in all cases to either (i) more than fifty (50) percent of total gross receipts or (ii) has monthly sales of prepared and/or packaged food in a ready-to-consume state in excess of thirty (30) percent of the total gross receipts for such establishment and such sales are not less than seventy-five thousand dollars (\$75,000.00) for such establishment for each quarter-year period of each year, and to include specific criteria for determining which sales can be attributed in the portion of sales of prepared and/or packaged food in a ready-to-consume state in the definitions for conventional restaurant and fast food restaurant

**Explanation:**

At its October 6, 2008 meeting, City Council requested the Planning Staff to develop a draft ordinance to create a new use category for dining and entertainment establishments. City Council further requested staff to solicit comments from interested persons concerning the draft ordinance.

On October 31, 2008, the Planning Staff mailed a request for comments, a copy of the draft ordinance, and an ordinance explanation to the Tar River University Neighborhood Association (TRUNA), 34 other neighborhood associations currently on file with the Community Development Department, the Chamber of Commerce, and Phil Dixon, attorney for the applicant. In addition, Planning Staff and the City Attorney met with TRUNA, Elmhurst/Englewood, and Colonial Heights Neighborhood Association representatives on November 5, 2008, and with Mr. Spengeman and Mr. Dixon on November 25, 2008, for the purposes of discussing the draft ordinance. A copy of the draft ordinances are included as attachments (original draft - 790079 and revised draft - 800786) as well as written comments received from interested persons. Although both the applicant and TRUNA had reviewed the original draft of the dining and entertainment ordinance and provided written comments to staff, the groups representatives had not had an opportunity to jointly meet and discuss these matters among themselves or to respond to the written comments made by the other prior to the December 11, 2008 Council meeting.

At the December 11, 2008 meeting, City Council continued consideration of the original request to amend the definition of restaurant as proposed by Mr Spengeman, and continued consideration of the draft ordinance to create a dining and entertainment establishment option, to the February 12, 2009 Council meeting. The continuance afforded adequate time for further input by the applicant and neighborhood representatives and the compilation of all comments and recommendations prior to development of a revised draft for Council consideration.

The applicant and TRUNA representatives met on January 15, 2009 to discuss the original draft ordinance to create a dining and entertainment use and the TRUNA Board subsequently met on January 28, 2009 to prepare an official TRUNA recommendation for City Council consideration.

Following their independent evaluation and joint meeting the applicant and TRUNA have both submitted separate recommendations concerning the original draft ordinance, a copy of each is attached for information and reference. Also attached are previous letters commenting upon the original draft ordinance.

The revised draft dining and entertainment ordinance is not a public hearing item at this time. If City Council should determine to proceed with consideration of any dining and entertainment use option, the ordinance to accomplish such will be forwarded to the Planning and Zoning Commission for review and recommendation and subsequent City Council public hearing in accordance with standard procedure.

The original draft dining and entertainment establishment ordinance included the following general provisions which are retained in the revised draft:

- (1) a (new) definition for dining and entertainment establishment including minimum food sales criteria (30% rule)
- (2) amended definitions for conventional and fast food restaurants to include a clause for determining the portion of sales that can be attributed to the sale of food
- (3) special use permit criteria for those cases where a dining and entertainment establishment is subject to special use permit approval of the board of adjustment including: (i) a revocation clause for noncompliance with standards and conditions, (ii) an annual staff review report requirement, (iii) permit rehearing procedures, (iv) trash and litter disposal requirements, (v) a business transfer notice requirement, (vi) cover charge allowance and date/time limitations, (vii) amplified audio entertainment allowance and date/time limitations, (viii) a minimum food sales (30% rule) requirement, (ix) a one year food sales records retention requirement, (x) an exterior lighting plan requirement, and (xi) a parking plan requirement – Note: the board of adjustment may impose additional site specific conditions on the use when such conditions are determined to be necessary in order for the board to find in favor of the application
- (4) ordinance imposed criteria for those cases where a dining and entertainment establishment is a permitted (by-right) use and is not subject to approval of the board of adjustment – includes all criteria listed under (3) above except (i), (ii) and (iii) concerning special use permit review and approval
- (5) an amended definition of “outdoor activities” to include amplified outdoor audio sound (applies to restaurants and dining and entertainment establishments)
- (6) a new section requiring all restaurants to maintain food sales records for one year

- (7) an amended public/private club parking standard to delete the employee based parking requirement and to specify the applicable activity area for minimum parking determination purposes
- (8) a dining and entertainment establishment parking requirement (same as public/private clubs)
- (9) table of use listing for dining and entertainment establishment (permitted or special use option in all districts that allow restaurants)

Proposed permitted use (by-right) in the following districts:

General Commercial (CG)  
Heavy Commercial (CH)  
Unoffensive Industry (IU)  
Industry (I)  
Planned Unoffensive Industry  
(PIU) Planned Industry(PI)

Proposed special use (board of adjustment approval required) in the following districts:

Medical – Support (MS)  
Medical – Office (MO)  
Medical – General Commercial (MCG)  
Medical – Heavy Commercial (MCH)  
Office – Residential (OR)  
Downtown Commercial (CD)  
Commercial Downtown Fringe (CDF)  
Neighborhood Commercial (CN)

Note: a dining and entertainment establishment is a class 4 use for bufferyard setback and screening purposes – same as a public/private club.

The revised draft dining and entertainment establishment ordinance includes the following changes to the original draft distributed to the City Council on December 11, 2008 and represents Staff's recommendations after considering all comments received from interested persons :

- (1) Establishes a maximum mechanically conditioned floor area requirement of 7,000 square feet for dining and entertainment establishments located in a CN district. This limits the size of the establishment. For reference, Unk's has 6,887 square feet of total mechanically conditioned floor area as indicated by the Pitt County property tax information. Christy's Euro Pub has 1,134 square feet of mechanically conditioned floor area.
- (2) Establishes a minimum separation requirement of 200 feet between dining and entertainment establishments located in a CN district as measured from the nearest lot line. This will limit impactation of the subject use in any CN district. For reference, the Unk's property boundary and the Christy's Euro Pub property boundary are separated by 242 feet as measured using the Pitt County tax map and the City's computer mapping system.
- (3) Allows an admission charge (cover) during any period of operation. This will allow the operator of a dining and entertainment establishment to charge a cover during all regular business days and makes allowance for special events (i.e. comedy night, etc.) during weekdays to compensate for an earlier cut-off time for amplified audio entertainment (i.e. 11:00 PM cut-off for Sunday through Thursday).

(4) Clarifies the meaning of amplified audio entertainment to specifically not include televisions operating with no amplification other than their internal speakers, or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment.

(5) Maintains the 11:00 PM cut-off for amplified audio entertainment as originally proposed for the period Sunday through Thursday, except as further specified for the “special period of operation” (below). This will minimize adverse activity commonly associated with larger crowds exiting such establishments on week (work) days at late night hours.

(6) Establishes a 2:00 AM cut-off for amplified audio entertainment on Friday and Saturday. This will allow dining and entertainment establishment to operate as “places of entertainment” on a limited basis, provided however such extended hours of entertainment (i.e. from 11:00 PM to 2:00 AM) will require qualified outside security personnel proportionate to the maximum occupancy of the establishment.

(7) Extends the amplified audio entertainment cut-off to 2:00 AM for the “special period of operation” – December 31st (New Years Eve). This will allow entertainment past midnight as is common for restaurants and similar uses.

(8) Changes the earliest time permitted for amplified audio entertainment any day from 8:00 AM to 11:00 AM. This change allows entertainment activities to begin at a reasonable time in the morning while allowing church services to beginning at typical worship hours at the Unk’s establishment, an existing church use on Sunday morning.

(9) Establishes a security requirement, (i.e. a minimum number of outside security personnel) for all dining and entertainment establishments that are located within 500 feet of a residential zoning district when the establishment provides or utilizes amplified audio entertainment after 11:00 PM on any day. This is designed to minimize secondary impacts, such as noisy patrons in the parking lot, when the establishment is open late hours.

(10) Establishes the following security personnel requirement for dining and entertainment establishments that are subject to a security requirement: (a) maximum occupancy limit less than 50 persons – no outside security officer, (d) maximum occupancy limit of 50 or more persons but less than 200 – one (1) outside security officer, and (c) occupancy of 200 or more persons – two (2) outside security officers. This requirement is designed to require outside security personnel in proportion to the maximum number of persons permitted to occupy the building as determined by the building inspector. The security personnel are to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 PM to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This requirement shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.

\*\*\*\*\*  
The original explanation concerning the applicant's request to amend the definition of conventional restaurant is also included as an attachment.

**Fiscal Note:** No direct cost to the City.

**Recommendation:** City staff recommends that City Council (i) continue the original request to amend the definition of restaurant, as proposed by Mr Spengeman, to the first regular Thursday City Council meeting occurring after the City Council public hearing and vote on the dining and entertainment establishment ordinance, and (ii) to initiate an amendment by forwarding the revised draft of an ordinance to create a dining and entertainment establishment use and associated standards to the Planning and Zoning Commission for their review and recommendation including any recommendations for amendment of the revised draft ordinance.

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**Attachments / click to download**

- [Elmhurst and Englewood Neighborhood Assoc. Letter No. 1](#)
- [Colonial Heights Neighborhood Assoc. Letter \(11/20/08\)](#)
- [TRUNA Letter No. 1](#)
- [Chamber of Commerce Letter \(11/26/08\)](#)
- [Phil Dixon Letter No. 2](#)
- [Phil Dixon Letter No. 1](#)
- [Phil Dixon Letter No. 3](#)
- [Phil Dixon Letter No. 4](#)
- [Phil Dixon Letter No. 5 \(1/22/09\)](#)
- [TRUNA Letter No. 2 \(1/29/09\)](#)
- [Elmhurst and Englewood Neighborhood Assoc. Letter No. 2 \(1/13/09\)](#)
- [Glen Arthur Neighborhood Assoc. \(12/31/08\)](#)
- [Spengeman Request Table of Contents 2 4 09 810929](#)
- [Draft Dining and Entertainment Establishment Ordinance 800786](#)
- [Original Dining and Entertainment Ordinance 790079](#)
- [Restaurant definition ordinance applicant substitute 747492](#)
- [Jeremy Spengeman P Z minutes 4 15 08 3 18 08 2 19 08 751524](#)
- [Memo to Mayor and CCM re Preemption of Zoning Ordinance Dr. Unk s 782843](#)
- [Original explanation of Spengeman Request 810429](#)

## Table of Contents

Draft - Dining and Entertainment Establishment Ordinance (Doc# 800786)

Original Draft - Dining and Entertainment Establishment Ordinance (Doc# 790079)

Restaurant definition ordinance (Doc# 747492)

Jerry Spengeman P&Z minutes (Doc# 751524)

Memo to Mayor and CCM re Preemption of Zoning DrUnk's (Doc# 782843)

Original explanation of Spengeman request (Doc# 810429)

TRUNA Letter No. 2 (1/29/09)

Phil Dixon Letter No. 5 (1/22/09)

Elmhurst and Englewood Neighborhood Assoc. Letter No. 2 (1/13/09)

Phil Dixon Letter No. 4 (1/7/09)

Glen Arthur Neighborhood Assoc. (12/31/08)

Phil Dixon Letter No. 3 (12/2/08)

Phil Dixon Letter No. 2 (12/1/08)

Chamber of Commerce Letter (11/26/08)

TRUNA Letter No. 1 (11/21/08)

Colonial Heights Neighborhood Assoc. Letter (11/20/08)

Phil Dixon Letter No. 1 (11/13/08)

Elmhurst and Englewood Neighborhood Assoc. Letter No. 1 (11/12/08)

## Draft - Dining and Entertainment Establishment Ordinance

### *Summary of Changes*

This **revised** draft (2/4/09) includes changes to the original draft distributed to interested persons on October 31, 2008 and included in the agenda material for City Council's December 11, 2008 meeting. The revised draft represents the Staff's recommendations after considering all comments received from interested persons. The following changes are included in the revised draft:

- Establishes a maximum mechanically conditioned floor area requirement of 7,000 square feet for dining and entertainment establishments located in a CN district. This limits the size of the establishment. For reference, Unk's has 6,887 square feet of total mechanically conditioned floor area as indicated by the Pitt County property tax information. Christy's Euro Pub has 1,134 square feet of mechanically conditioned floor area.
- Establishes a minimum separation requirement of 200 feet between dining and entertainment establishments located in a CN district as measured from the nearest lot line. This will limit impaction of the subject use in any CN district. For reference, the Unk's property boundary and the Christy's Euro Pub property boundary are separated by 242 feet as measured using the Pitt County tax map and the City's computer mapping system.
- Allows an admission charge (cover) during any period of operation. This will allow the operator of a dining and entertainment establishment to charge a cover during all regular business days and makes allowance for special events (i.e. comedy night, etc.) during weekdays to compensate for an earlier cut-off time for amplified audio entertainment (i.e. 11:00 PM cut-off for Sunday through Thursday).
- Clarifies the meaning of amplified audio entertainment to specifically not include televisions operating with no amplification other than their internal speakers, or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment.
- Maintains the 11:00 PM cut-off for amplified audio entertainment as originally proposed for the period Sunday through Thursday, except as further specified for the "special period of operation" (below). This will minimize adverse activity commonly associated with larger crowds exiting such establishments on week (work) days at late night hours.
- Establishes a 2:00 AM cut-off for amplified audio entertainment on Friday and Saturday. This will allow dining and entertainment establishment to operate as "places of entertainment" on a limited basis, provided however such extended hours of entertainment (i.e. from 11:00 PM to 2:00 AM) will require qualified

outside security personnel proportionate to the maximum occupancy of the establishment.

- Extends the amplified audio entertainment cut-off to 2:00 AM for the “special period of operation” – December 31<sup>st</sup> (New Years Eve). This will allow entertainment past midnight as is common for restaurants and similar uses on this day.
- Changes the earliest time permitted for amplified audio entertainment any day from 8:00 AM to 11:00 AM. This change allows entertainment activities to begin at a reasonable time in the morning while allowing church services to beginning at typical worship hours at the Unk’s establishment, an existing church use on Sunday morning.
- Establishes a security requirement, (i.e. a minimum number of outside security personnel) for all dining and entertainment establishments that are located within 500 feet of a residential zoning district when the establishment provides or utilizes amplified audio entertainment after 11:00 PM on any day. This is designed to minimize secondary impacts, such as noisy patrons in the parking lot, when the establishment is open late hours.
- Establishes the following security personnel requirement for dining and entertainment establishments that are subject to a security requirement:
  - maximum occupancy limit less than 50 persons – no outside security officer
  - maximum occupancy limit of 50 or more persons but less than 200 – one (1) outside security officer
  - occupancy of 200 or more persons – two (2) outside security officers

This requirement is designed to require outside security personnel in proportion to the maximum number of persons permitted to occupy the building as determined by the building inspector.

The security personnel are to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 PM to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This requirement shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.

#### **Sec. 9-4-22. Words and terms defined.**

##### **NEW DEFINITION**

*Dining and entertainment establishment. An eating and entertainment establishment open to the general public and which meets all of the following:*

- (1) May require a membership, cover, or minimum charge for admittance or service during special periods of operation in accordance with this Chapter;



- (2) Has sales of prepared and/or packaged foods, in a ready to consume state, in excess of thirty (30) percent of the total gross receipts for such establishment during any month. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for such establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection (2), the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina;
- (3) Does provide sit down dining area(s);
- (4) May provide food attendant (waiter/waitress) table ordering and busboy services;
- (5) May offer food in disposable containers;
- (6) May offer carry-out and/or off-site delivery services;
- (7) Does not offer drive-in attendant services;
- (8) May exhibit one (1) but not both of the following operational functions or characteristics:
  - (a) Drive thru service.
  - (b) Over the counter service. For purposes of this section the term "over the counter service" shall include both customer ordering and the receipt of food, excepting beverages, condiments, utensils, etc., from an order/delivery station or counter remote to the on-site place of consumption;
- (9) May have one or more of the following activities or services, which is open to the establishments patrons and general public and is limited to the hours of operation of complete food services including regular menu food ordering, food preparation and on-premise food consumption, except as otherwise provided in this subsection (9): full service bar, live or recorded amplified music, floor show and dancing area. Complete food services including regular menu food ordering, food preparation and on-premise food consumption services may be suspended at the option of the owner/operator not less than one (1) hour prior to the close of business each evening. For purposes of interpretation of this section, when a dining and entertainment establishment closes for business at 12:00 AM (midnight) complete restaurant services including regular menu food ordering, food preparation and on-premise food consumption shall be provided until not less than 11:00 PM of the same day;

- (10) Shall be limited to a maximum mechanically conditioned floor area requirement and shall comply with a minimum separation and security plan requirement as specified under sections 9-4-86 and 9-4-103. Any dining and entertainment establishment that does not meet the aforesaid requirements shall be classified as a “public or private club” for purposes of zoning regulation; and
- (11) Does not qualify under the definition of “restaurant, fast food” or “restaurant, conventional” as contained herein.

**AMENDED DEFINITION – to include a dining and entertainment establishment use qualifier**

*Public or private club.* An establishment of which the principal use is entertainment and which meets all of the following:

- (1) May be open to the general public;
- (2) May require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation;
- (3) May provide live or recorded amplified music;
- (4) May provide a floor show;
- (5) May provide a dance area;
- (6) May offer a full service bar;
- (7) May offer food services;
- (8) May provide food attendant (waiter/waitress) table ordering and busboy services; and
- (9) Does not qualify under the definition of “restaurant, fast food”, “restaurant, conventional”, or “dining and entertainment establishment”, as contained herein.
- (10) Any proposed or established “dining and entertainment establishment” that does not comply with the definition, standards or requirements applicable to dining and entertainment establishments as contained herein shall be classified as a “public or private club” for purposes of zoning regulation.

**AMENDED DEFINITION – to include a food sales determination clause**

*Restaurant, conventional.* An eating establishment open to the general public of which the principal use is food services including food ordering, food preparation and on-premise food consumption, and which meets all of the following:

- (1) Does not require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation;
- (2) Has sales of prepared and/or packaged foods, in a ready to consume state, in excess of fifty (50) percent of the total gross receipts for such establishment during any month. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment’s kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii)

- packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection (2), the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina;
- (3) May offer food in disposable containers;
  - (4) Does provide sit down dining area(s);
  - (5) Does provide table cleaning and clearing (busboy) services;
  - (6) Does provide attendant (waiter/waitress) food delivery services, unless over the counter service is provided in accordance with section 9 below;
  - (7) May offer carry-out and/or off-site delivery services provided such food service is an accessory activity;
  - (8) Does not offer drive-in attendant services;
  - (9) May exhibit one (1) but not both of the following operational functions or characteristics:
    - (a) Drive thru service.
    - (b) Over the counter service. For purposes of this section the term “over the counter service” shall include both customer ordering and the receipt of food, excepting beverages, condiments, utensils, etc., from a order/delivery station or counter remote to the on-site place of consumption; and
  - (10) May have as an ancillary or accessory use a full service bar, live or recorded amplified music, floor show and dancing area which is open to the restaurant patrons and general public and is limited to the hours of operation of the principal use restaurant.

**AMENDED DEFINITION – to include a food sales determination clause**

*Restaurant, fast food. An eating establishment open to the general public of which the principal use is food services including food ordering, food preparation and on-premise food consumption, and which meets all of the following:*

- (1) Does not require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation;
- (2) Has sales of prepared and/or packaged foods, in a ready to consume state, in excess of fifty (50) percent of the total gross receipts for such establishment during any month. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment’s kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii)

- packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection (2), the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina;
- (3) Does not qualify as a conventional restaurant by definition; and
  - (4) May have as an ancillary or accessory use a full service bar, live or recorded amplified music, floor show, and dancing area which is open to the restaurant patrons and general public and is limited to the hours of operation of the principal use restaurant.
  - (5) The following is not considered a “restaurant, fast food” under this definition.
    - (a) Ancillary or accessory food service for a permitted principal use where such food service is open to the general public such as an employee and/or patron cafeteria or eating area;
    - (b) Temporary food service as part of permitted temporary uses such as carnivals, fairs, street fairs, circuses, athletic events, community events, concerts, nonprofit fund raising events, emergency shelters, and the like; or
    - (c) Any establishment where the preparation of food is merely incidental to the sale of food such as a grocery store or food market and the like.

**AMENDED DEFINITION – to include outdoor amplified sound as an “outdoor activity”**

Restaurant and/or dining and entertainment establishment; outdoor activities. A principal and/or accessory use area associated with or utilized in conjunction with a conventional or fast food restaurant or a dining and entertainment establishment which is intended for the temporary or permanent conduct of activities relative to the sale, transfer or enjoyment of products and/or services to persons located on the business premises and which is open and unenclosed on one (1) or more sides or which is without a complete roof structure. For purposes of this section all areas not constituting “mechanically conditioned area” as determined by the building inspector shall be considered open and unenclosed. Additionally, fences and/or wire or plastic mesh screens absent a functional window shall be considered open and unenclosed for purposes of this section. Use of any amplified outdoor audio sound system including loud speakers, audio speakers or other electronic or mechanical sound transmission devices shall be considered as an “outdoor activity” for purposes of this definition.

**AMENDED DEFINITION – to reference dining and entertainment establishment**

Restaurant and/or dining and entertainment establishment; regulated outdoor activities. Any “restaurant and/or dining and entertainment establishment; outdoor activity”, as defined herein, which is located within three hundred (300) feet, as measured to the closest point, of any residential district, excepting CDF, which allows single-family dwellings as a permitted use.

**EXISTING SECTION – No change (included here for reference only)**

**Sec. 9-4-84. Specific criteria.**

The board of adjustment may grant permission for the establishment of the uses listed under section 9-4-85 subject to the specific criteria set forth under section 9-4-86 and any conditions which the board may deem necessary to satisfy the general criteria set forth in section 9-4-81.

**AMENDED SECTION – include new subsection (f)1**

**Sec. 9-4-85. Listed uses--Index.**

(f)1. Dining and entertainment establishments.

**AMENDED SECTION – include new subsection (f)1 applicable to dining and entertainment establishments that are subject to special use permit approval of the board of adjustment – applies only to the MS, MO, MCG, MCH, OR, CD, CDF, and CN zones**

**Sec. 9-4-86. Same--Specific criteria.**

(f)1. Dining and entertainment establishments.

(1)(a) A special use permit for a dining and entertainment establishment is subject to revocation in accordance with the provisions of this subsection (f)1. Nothing herein shall prohibit or restrict the authority of the board of adjustment to rescind or revoke a special use permit for a dining and entertainment establishment in accordance with the provisions of section 9-4-83.

(b) An annual review shall be conducted by the director of community development or his authorized representative of a dining and entertainment establishment which has received a special use permit for the purpose of determining and ensuring compliance with applicable laws, codes, and ordinances including, but not limited to, noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety

regulations, and special use permit conditions of approval. The findings of the director of community development or his authorized representative as a result of this annual review shall be compiled in a written staff report.

- (c) At a meeting of the board of adjustment, the director of community development or his authorized representative shall present to the board of adjustment the staff report of a dining and entertainment establishment for which the annual review includes a finding of one or more instances of non-compliance with applicable laws, codes, and ordinances including, but not limited to, noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (4) below shall be provided notice of the meeting and a copy of the staff report.
- (d) Based on the staff report, the board of adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit. An order for a rehearing shall be based upon a determination by the board of adjustment that either (i) the use of the property is inconsistent with the approved application, (ii) the use is not in full compliance with all specific requirements set out in Title 9, Chapter 4 of the Greenville City Code, (iii) the use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard, or (iv) the use is not compliant with any additional conditions of approval established by the board and set out in the order granting the permit. The rehearing shall be in the nature of, and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the board of adjustment may grant a special use permit with conditions imposed pursuant to this subsection (f)1 and section 9-4-82 or deny the special use permit. The grant or denial of the special use permit by the board of adjustment after the rehearing shall constitute a revocation of the previously granted special use permit for a dining and entertainment establishment.
- (e) The requirements and standards set forth in this subsection (f)(1) are in addition to other available remedies and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.
- (2) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 AM each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the

establishment, associated parking areas, adjacent sidewalks and public right-of-ways or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and entertainment establishment shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots.

- (3) In addition to subsection (2) above, the board of adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
- (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a dining and entertainment establishment, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the director of community development an acknowledgement of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgement shall be made on forms provided by the planning office.
- (5) May require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation. ~~between 5:00 PM Friday through 12:00 AM (midnight) Sunday only;~~
- (6) ~~Weekdays. Except as further provided under subsection (8) below, dining and entertainment establishments shall not have amplified audio entertainment after 11:00 PM each Monday, Tuesday, Wednesday, and Thursday night or before 11:00 AM of the next day. For purposes of this section "amplified audio entertainment" shall mean any type of music or other entertainment delivered through and by an electronic system, provided however televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment;~~
- (7) ~~Weekends. Except as further provided under subsection (8) below, dining and entertainment establishments shall not have amplified audio entertainment after 2:00 AM each Friday and Saturday night or before 11:00 AM of the next day, and shall not have amplified audio entertainment after 11:00 PM each Sunday night or before 11:00 AM of the next day. For purposes of this section "amplified audio entertainment" shall mean any type of music or other entertainment delivered through and by an electronic system, provided however televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment;~~

- (8) Special period of operation. The allowable period of amplified audio entertainment may be extended, at the option of the owner/operator, from the times specified under subsections (6) and (7) above to not later than 2:00 AM or before 11:00 AM of the next day on the following day: December 31<sup>st</sup> (New Years Eve).
- (9) Shall have sales of prepared and/or packaged foods, in a ready to consume state, in excess of thirty (30) percent of the total gross receipts for such establishment during any month. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) any other product, item, entertainment, service, or gratuity which is not specified in this subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for such establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection, the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina;
- (10) Records related to the sale of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be maintained on premises for not less than one (1) year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the zoning enforcement officer. The zoning enforcement officer may view the records on the premises of the establishment or may request copies of such written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this subsection shall be for the purpose of determining compliance with subsection (8) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the zoning enforcement officer shall constitute a violation of the zoning regulations.
- (11) A lighting plan shall be submitted to the director of community development, or authorized agent for review and approval and lighting



fixtures shall be installed and maintained pursuant to such approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the director of community development, or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104.

- (12) A parking plan which conforms to the provisions of Article O., Parking, shall be submitted to the director of community development, or authorized agent for site plan review and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(2) shall not apply to a dining and entertainment establishment and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote parking facility in accordance with section 9-4-250.
- (13) No dining and entertainment establishment located in a CN (neighborhood commercial) district shall contain more than 7,000 total square feet of mechanically conditioned floor area, including but not limited to any activity area, kitchen, restroom, interior walk-in storage room, hallway, foyer, bar and serving station, seating area, dance floor, and sound stage.
- (14) No dining and entertainment establishment located in a CN (neighborhood commercial) district shall be located within a two-hundred (200) foot radius of an existing or approved dining and entertainment establishment located within any CN (neighborhood commercial) district as measured from the nearest lot line.
- (15) When a dining and entertainment establishment (i) is located within five-hundred (500) foot radius, including street right-of-ways, of a residential zoning district as measured from the building or structure containing a dining and entertainment establishment to the nearest residential zoning district boundary, and (ii) such establishment provides or utilizes amplified audio entertainment as defined herein after 11:00 PM on any day, such establishment shall be subject to a security requirement during and after such period of amplified audio entertainment as follows:
  - a. Establishments that have an approved occupancy above 50 but less than 200 total persons as determined by the building inspector shall employ not less than one (1) uniformed off-duty law enforcement officer, or not less than one (1) uniformed security guard provided by a security guard and control profession licensed in accordance with the provisions of Chapter 74C of the North Carolina General Statutes, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 PM to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated

parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.

b. Establishments that have an approved occupancy of 200 or more total persons as determined by the building inspector shall employ not less than two (2) uniformed off-duty law enforcement officers, or not less than two (2) uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of Chapter 74C of the North Carolina General Statutes, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 PM to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.

c. For purposes of this section the term “residential zoning district” shall include the following districts: RA20, R6MH, R6, R6A, R6A-RU, R6N, R6S, R9, R9S, R15S, PUD, MR, and MRS.

**AMENDED SECTION – include new subsection (t) applicable to dining and entertainment establishments that are not subject to special use permit approval of the board of adjustment – applies only to the CG, CH, IU, I, PIU AND PI zones (same criteria as applies to special uses)**

**Sec. 9-4-103. Special standards for certain specific uses.**

(t) Dining and entertainment establishment not subject to Article E. Standards and Criteria for Special Uses shall comply with all of the following:

(1) When a dining and entertainment establishment (i) is located within five-hundred (500) foot radius, including street right-of-ways, of a residential zoning district as measured from the building or structure containing a dining and entertainment establishment to the nearest residential zoning district boundary, and (ii) such establishment provides or utilizes amplified audio entertainment as defined herein after 11:00 PM on any day, such establishment shall be subject to a security requirement during and after such period of amplified audio entertainment as follows:

a. Establishments that have an approved occupancy above 50 but less than 200 total persons as determined by the building inspector shall employ not

less than one (1) uniformed off-duty law enforcement officer, or not less than one (1) uniformed security guard provided by a security guard and control profession licensed in accordance with the provisions of Chapter 74C of the North Carolina General Statutes, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 PM to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.

b. Establishments that have an approved occupancy of 200 or more total persons as determined by the building inspector shall employ not less than two (2) uniformed off-duty law enforcement officers, or not less than two (2) uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of Chapter 74C of the North Carolina General Statutes, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 PM to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.

c. For purposes of this section the term “residential zoning district” shall include the following districts: RA20, R6MH, R6, R6A, R6A-RU, R6N, R6S, R9, R9S, R15S, PUD, MR, and MRS.

- (2) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 AM each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public right-of-ways or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and entertainment establishment shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots;
- (3) May require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation. ~~between 5:00 PM Friday through 12:00 AM (midnight) Sunday only;~~

- (4) Weekdays. Except as further provided under subsection (6) below, dining and entertainment establishments shall not have amplified audio entertainment after 11:00 PM each Monday, Tuesday, Wednesday, and Thursday night or before 11:00 AM of the next day. For purposes of this section “amplified audio entertainment” shall mean any type of music or other entertainment delivered through and by an electronic system, provided however televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment;
- (5) Weekends. Except as further provided under subsection (6) below, dining and entertainment establishments shall not have amplified audio entertainment after 2:00 AM each Friday and Saturday night or before 11:00 AM of the next day, and shall not have amplified audio entertainment after 11:00 PM each Sunday night or before 11:00 AM of the next day. For purposes of this section “amplified audio entertainment” shall mean any type of music or other entertainment delivered through and by an electronic system, provided however televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment;
- (6) Special period of operation. The allowable period of amplified audio entertainment may be extended, at the option of the owner/operator, from the times specified under subsections (4) and (5) above to not later than 2:00 AM or before 11:00 AM of the next day on the following day: December 31<sup>st</sup> (New Years Eve).
- (7) Shall have sales of prepared and/or packaged foods, in a ready to consume state, in excess of thirty (30) percent of the total gross receipts for such establishment during any month. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment’s kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) any other product, item, entertainment, service, or gratuity which is not specified in this subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts

for such establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection, the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina;

- (8) Records related to the sale of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be maintained on premises for not less than one (1) year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the zoning enforcement officer. The zoning enforcement officer may view the records on the premises of the establishment or may request copies of such written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this subsection shall be for the purpose of determining compliance with subsection (5) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the zoning enforcement officer shall constitute a violation of the zoning regulations.
- (9) A lighting plan shall be submitted to the director of community development, or authorized agent for review and approval and lighting fixtures shall be installed and maintained pursuant to such approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the director of community development, or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104.
- (10) A parking plan which conforms to the provisions of Article O., Parking, shall be submitted to the director of community development, or authorized agent for site plan review and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(2) shall not apply to a dining and entertainment establishment and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote parking facility in accordance with section 9-4-250.

**AMENDED SECTION – include new subsection (o)1 concerning records retention (applicable to conventional and fast food restaurants in any zone)**

(o)1. Restaurant; conditional and/or restaurant; fast food

- (1) Records related to the sale of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be maintained on premises for not less than one (1) year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the zoning enforcement officer. The zoning enforcement officer may view the records on the premises of the establishment or may request copies of such written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this section shall be for the purpose of determining the portion of sales attributed to the sale of prepared and/or packaged food in a ready to consume state. Failure to provide all records required by this section in a timely manner, to be determined by the city, upon written request of the zoning enforcement officer shall constitute a violation of the zoning regulations.

**Sec. 9-4-252. Schedule of required parking spaces.**

**AMENDED SECTION – to delete reference to the number of employees and specify applicable activity area for purposes of determining the minimum number of parking spaces**

(50) Public or private club

1 space for every 50 square feet of activity area including any dining area, hallway, ~~foyer,~~ ~~restroom;~~ dance floor, bar and other area accessible by the patrons of the establishment.

**NEW SECTION – parking standard for new use (same as public/private club)**

(50)1. Dining and entertainment establishment

1 space for every 50 square feet of activity area including any dining area, hallway, ~~foyer,~~ ~~restroom;~~ dance floor, bar and other area accessible by the patrons of the establishment.

**Sec. 9-4-78. Table of Uses. (proposed: S = special use and P = permitted use)**

**NEW SECTION m(1) – DINING AND ENTERTAINMENT ESTABLISHMENT  
TABLE OF USE LISTING**

|       |   | (6) Recreational/Entertainment. |              |              |             |             |             |             |             |             |        |        |        |        |        |             |             |        |   |        |             |        |        |        |        |   |             |        |  |
|-------|---|---------------------------------|--------------|--------------|-------------|-------------|-------------|-------------|-------------|-------------|--------|--------|--------|--------|--------|-------------|-------------|--------|---|--------|-------------|--------|--------|--------|--------|---|-------------|--------|--|
| USE   |   | LU<br>C#                        | R<br>A<br>20 | R<br>15<br>S | R<br>9<br>S | R<br>6<br>S | R<br>6<br>N | R<br>9<br>6 | R<br>6<br>A | R<br>6<br>H | M<br>I | M<br>S | M<br>O | M<br>G | M<br>R | M<br>C<br>H | M<br>R<br>S | O<br>R | O | C<br>D | C<br>D<br>F | C<br>G | C<br>N | C<br>H | I<br>U | I | P<br>I<br>U | P<br>I |  |
| m     | Public or private club  | 4                               |              |              |             |             |             |             |             |             |        |        |        |        |        |             |             |        |   |        | S           | S      | S      |        | S      |   |             |        |  |
| m (1) | Dining and entertainment establishment (see also Section 9-4-103) | 4                               |              |              |             |             |             |             |             |             |        |        |        | S      | S      | S           |             | S      |   | S      | S           | P      | S      | P      | P      | P | P           | P      |  |

**AMENDED SECTION j – RESTAURANT AND/OR DINING AND ENTERTAINMENT ESTABLISHMENT; REGULATED OUTDOOR ACTIVITIES TABLE OF USE LISTING**

|     |  | (10) Retail Trade. |              |              |             |             |             |             |             |             |        |        |        |        |        |             |             |        |   |        |             |        |        |        |        |   |             |        |   |
|-----|--|--------------------|--------------|--------------|-------------|-------------|-------------|-------------|-------------|-------------|--------|--------|--------|--------|--------|-------------|-------------|--------|---|--------|-------------|--------|--------|--------|--------|---|-------------|--------|---|
| USE |  | LUC#               | R<br>A<br>20 | R<br>15<br>S | R<br>9<br>S | R<br>6<br>S | R<br>6<br>N | R<br>9<br>6 | R<br>6<br>A | R<br>6<br>H | M<br>I | M<br>S | M<br>O | M<br>G | M<br>R | M<br>C<br>H | M<br>R<br>S | O<br>R | O | C<br>D | C<br>D<br>F | C<br>G | C<br>N | C<br>H | I<br>U | I | P<br>I<br>U | P<br>I |   |
| h.  | Restaurant; conventional (see also Section 9-4-103)                                    | 3                  |              |              |             |             |             |             |             |             |        |        |        | S      | S      | P           |             | P      |   | S      |             | P      | P      | P      | P      | P | P           | P      | P |
| i.  | Restaurant; fast food (see also Section 9-4-103)                                       | 4                  |              |              |             |             |             |             |             |             |        |        |        | S      | P      |             | P           |        |   |        | P           | P      | P      | S      | P      | P | P           | P      | P |
| j.  | Restaurant and/or dining and entertainment establishment; regulated outdoor activities | 4                  |              |              |             |             |             |             |             |             |        |        |        | S      | S      | S           |             | S      |   | S      | S           | S      | S      | S      | S      | S | S           | S      | S |

# Original Draft - Dining and Entertainment Establishment

## **Sec. 9-4-22. Words and terms defined.**

### **NEW DEFINITION**

*Dining and entertainment establishment.* An eating and entertainment establishment open to the general public and which meets all of the following:

- (1) May require a membership, cover, or minimum charge for admittance or service during special periods of operation in accordance with this Chapter;
- (2) Has sales of prepared and/or packaged foods, in a ready to consume state, in excess of thirty (30) percent of the total gross receipts for such establishment during any month. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for such establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection (2), the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina;
- (3) Does provide sit down dining area(s);
- (4) May provide food attendant (waiter/waitress) table ordering and busboy services;
- (5) May offer food in disposable containers;
- (6) May offer carry-out and/or off-site delivery services;
- (7) Does not offer drive-in attendant services;
- (8) May exhibit one (1) but not both of the following operational functions or characteristics:
  - (a) Drive thru service.



- (b) Over the counter service. For purposes of this section the term “over the counter service” shall include both customer ordering and the receipt of food, excepting beverages, condiments, utensils, etc., from an order/delivery station or counter remote to the on-site place of consumption;
- (9) May have one or more of the following activities or services, which is open to the establishments patrons and general public and is limited to the hours of operation of complete food services including regular menu food ordering, food preparation and on-premise food consumption, except as otherwise provided in this subsection (9): full service bar, live or recorded amplified music, floor show and dancing area. Complete food services including regular menu food ordering, food preparation and on-premise food consumption services may be suspended at the option of the owner/operator not less than one (1) hour prior to the close of business each evening. For purposes of interpretation of this section, when a dining and entertainment establishment closes for business at 12:00 AM (midnight) complete restaurant services including regular menu food ordering, food preparation and on-premise food consumption shall be provided until not less than 11:00 PM of the same day; and
- (10) Does not qualify under the definition of “restaurant, fast food” or “restaurant, conventional” as contained herein.

**EXISTING DEFINITION – no change**

Public or private club. An establishment of which the principal use is entertainment and which meets all of the following:

- (1) May be open to the general public;
- (2) May require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation;
- (3) May provide live or recorded amplified music;
- (4) May provide a floor show;
- (5) May provide a dance area;
- (6) May offer a full service bar;
- (7) May offer food services;
- (8) May provide food attendant (waiter/waitress) table ordering and busboy services; and
- (9) Does not qualify under the definition of “restaurant, fast food”, “restaurant, conventional”, or “dining and entertainment establishment”, as contained herein.

**AMENDED DEFINITION – to include a food sales determination clause**

*Restaurant, conventional. An eating establishment open to the general public of which the principal use is food services including food ordering, food preparation and on-premise food consumption, and which meets all of the following:*

- (1) Does not require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation;
- (2) Has sales of prepared and/or packaged foods, in a ready to consume state, in excess of fifty (50) percent of the total gross receipts for such establishment during any month. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection (2), the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina;
- (3) May offer food in disposable containers;
- (4) Does provide sit down dining area(s);
- (5) Does provide table cleaning and clearing (busboy) services;
- (6) Does provide attendant (waiter/waitress) food delivery services, unless over the counter service is provided in accordance with section 9 below;
- (7) May offer carry-out and/or off-site delivery services provided such food service is an accessory activity;
- (8) Does not offer drive-in attendant services;
- (9) May exhibit one (1) but not both of the following operational functions or characteristics:
  - (a) Drive thru service.
  - (b) Over the counter service. For purposes of this section the term "over the counter service" shall include both customer ordering and the receipt of food, excepting beverages, condiments, utensils, etc., from a order/delivery station or counter remote to the on-site place of consumption; and
- (10) May have as an ancillary or accessory use a full service bar, live or recorded amplified music, floor show and dancing area which is open to the restaurant patrons and general public and is limited to the hours of operation of the principal use restaurant.

**AMENDED DEFINITION – to include a food sales determination clause**

*Restaurant, fast food.* An eating establishment open to the general public of which the principal use is food services including food ordering, food preparation and on-premise food consumption, and which meets all of the following:

- (1) Does not require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation;
- (2) Has sales of prepared and/or packaged foods, in a ready to consume state, in excess of fifty (50) percent of the total gross receipts for such establishment during any month. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection (2), the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina;
- (3) Does not qualify as a conventional restaurant by definition; and
- (4) May have as an ancillary or accessory use a full service bar, live or recorded amplified music, floor show, and dancing area which is open to the restaurant patrons and general public and is limited to the hours of operation of the principal use restaurant.
- (5) The following is not considered a "restaurant, fast food" under this definition.
  - (a) Ancillary or accessory food service for a permitted principal use where such food service is open to the general public such as an employee and/or patron cafeteria or eating area;
  - (b) Temporary food service as part of permitted temporary uses such as carnivals, fairs, street fairs, circuses, athletic events, community events, concerts, nonprofit fund raising events, emergency shelters, and the like; or
  - (c) Any establishment where the preparation of food is merely incidental to the sale of food such as a grocery store or food market and the like.

**AMENDED DEFINITION – to include outdoor amplified sound as an “outdoor activity”**

Restaurant and/or dining and entertainment establishment; outdoor activities. A principal and/or accessory use area associated with or utilized in conjunction with a conventional or fast food restaurant or a dining and entertainment establishment which is intended for the temporary or permanent conduct of activities relative to the sale, transfer or enjoyment of products and/or services to persons located on the business premises and which is open and unenclosed on one (1) or more sides or which is without a complete roof structure. For purposes of this section all areas not constituting “mechanically conditioned area” as determined by the building inspector shall be considered open and unenclosed. Additionally, fences and/or wire or plastic mesh screens absent a functional window shall be considered open and unenclosed for purposes of this section. Use of any amplified outdoor audio sound system including loud speakers, audio speakers or other electronic or mechanical sound transmission devices shall be considered as an “outdoor activity” for purposes of this definition.

**AMENDED DEFINITION – to reference dining and entertainment establishment**

Restaurant and/or dining and entertainment establishment; regulated outdoor activities. Any “restaurant and/or dining and entertainment establishment; outdoor activity”, as defined herein, which is located within three hundred (300) feet, as measured to the closest point, of any residential district, excepting CDF, which allows single-family dwellings as a permitted use.

**EXISTING SECTION – No change (included here for reference only)**

**Sec. 9-4-84. Specific criteria.**

The board of adjustment may grant permission for the establishment of the uses listed under section 9-4-85 subject to the specific criteria set forth under section 9-4-86 and any conditions which the board may deem necessary to satisfy the general criteria set forth in section 9-4-81.

**AMENDED SECTION – include new subsection (f)1**

**Sec. 9-4-85. Listed uses--Index.**

(f)1. Dining and entertainment establishments.

**AMENDED SECTION – include new subsection (f)1 applicable to dining and entertainment establishments that are subject to special use permit approval of the board of adjustment – applies only to the MS, MO, MCG, MCH, OR, CD, CDF, AND CN zones**

**Sec. 9-4-86. Same--Specific criteria.**

(f)1. Dining and entertainment establishments.

- (1)(a) A special use permit for a dining and entertainment establishment is subject to revocation in accordance with the provisions of this subsection (f)1. Nothing herein shall prohibit or restrict the authority of the board of adjustment to rescind or revoke a special use permit for a dining and entertainment establishment in accordance with the provisions of section 9-4-83.
- (b) An annual review shall be conducted by the director of community development or his authorized representative of a dining and entertainment establishment which has received a special use permit for the purpose of determining and ensuring compliance with applicable laws, codes, and ordinances including, but not limited to, noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The findings of the director of community development or his authorized representative as a result of this annual review shall be compiled in a written staff report.
- (c) At a meeting of the board of adjustment, the director of community development or his authorized representative shall present to the board of adjustment the staff report of a dining and entertainment establishment for which the annual review includes a finding of one or more instances of non-compliance with applicable laws, codes, and ordinances including, but not limited to, noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (4) below shall be provided notice of the meeting and a copy of the staff report.
- (d) Based on the staff report, the board of adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit. An order for a rehearing shall be based upon a determination by the board of adjustment that either (i) the use of the property is inconsistent with the approved application, (ii) the use is not in full compliance with all specific requirements set out in Title 9, Chapter 4 of the Greenville City Code, (iii) the use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties

or improvements, and nuisance or hazard, or (iv) the use is not compliant with any additional conditions of approval established by the board and set out in the order granting the permit. The rehearing shall be in the nature of, and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the board of adjustment may grant a special use permit with conditions imposed pursuant to this subsection (f)1 and section 9-4-82 or deny the special use permit. The grant or denial of the special use permit by the board of adjustment after the rehearing shall constitute a revocation of the previously granted special use permit for a dining and entertainment establishment.

- (e) The requirements and standards set forth in this subsection (f)(1) are in addition to other available remedies and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.
- (2) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 AM each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public right-of-ways or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and entertainment establishment shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots.
- (3) In addition to subsection (2) above, the board of adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
- (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a dining and entertainment establishment, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the director of community development an acknowledgement of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgement shall be made on forms provided by the planning office.
- (5) May require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation between 5:00 PM Friday through 12:00 AM (midnight) Sunday only;
- (6) Shall not have amplified audio entertainment after 11:00 PM each Monday, Tuesday, Wednesday, and Thursday night or before 8:00 AM of the following morning of the next day. For purposes of this section “amplified audio entertainment” shall mean any type of music or other entertainment

delivered through and by an electronic system, provided however televisions operating with no amplification other than their internal speakers and indoor background music system operating at a low amplification and not intended for entertainment shall not be deemed amplified audio entertainment;

- (7) Shall not have amplified audio entertainment after 12:00 AM (midnight) each Friday; Saturday and Sunday night or before 8:00 AM of the following morning of the next day. For purposes of this section “amplified audio entertainment” shall mean any type of music or other entertainment delivered through and by an electronic system, provided however televisions operating with no amplification other than their internal speakers and indoor background music system operating at a low amplification and not intended for entertainment shall not be deemed amplified audio entertainment;
- (8) Shall have sales of prepared and/or packaged foods, in a ready to consume state, in excess of thirty (30) percent of the total gross receipts for such establishment during any month. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment’s kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) any other product, item, entertainment, service, or gratuity which is not specified in this subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for such establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection, the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina;
- (9) Records related to the sale of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be maintained on premises for not less than one (1) year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the zoning enforcement officer. The zoning enforcement officer may view the records on the premises of the establishment or may request copies of such written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The

requirements of this subsection shall be for the purpose of determining compliance with subsection (8) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the zoning enforcement officer shall constitute a violation of the zoning regulations.

- (10) A lighting plan shall be submitted to the director of community development, or authorized agent for review and approval and lighting fixtures shall be installed and maintained pursuant to such approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the director of community development, or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104.
- (11) A parking plan which conforms to the provisions of Article O., Parking, shall be submitted to the director of community development, or authorized agent for site plan review and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(2) shall not apply to a dining and entertainment establishment and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote parking facility in accordance with section 9-4-250.

**AMENDED SECTION – include new subsection (t) applicable to dining and entertainment establishments that are not subject to special use permit approval of the board of adjustment – applies only to the CG, CH, IU, I, PIU AND PI zones (same criteria as applies to special uses)**

**Sec. 9-4-103. Special standards for certain specific uses.**

- (t) Dining and entertainment establishment not subject to Article E. Standards and Criteria for Special Uses shall comply with all of the following:
  - (1) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 AM each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public right-of-ways or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and entertainment establishment



shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots;

- (2) May require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation between 5:00 PM Friday through 12:00 AM (midnight) Sunday only;
- (3) Shall not have amplified audio entertainment after 11:00 PM each Monday, Tuesday, Wednesday, and Thursday night or before 8:00 AM of the following morning of the next day. For purposes of this section “amplified audio entertainment” shall mean any type of music or other entertainment delivered through and by an electronic system, provided however televisions operating with no amplification other than their internal speakers and indoor background music system operating at a low amplification and not intended for entertainment shall not be deemed amplified audio entertainment;
- (4) Shall not have amplified audio entertainment after 12:00 AM (midnight) each Friday; Saturday and Sunday night or before 8:00 AM of the following morning of the next day. For purposes of this section “amplified audio entertainment” shall mean any type of music or other entertainment delivered through and by an electronic system, provided however televisions operating with no amplification other than their internal speakers and indoor background music system operating at a low amplification and not intended for entertainment shall not be deemed amplified audio entertainment;
- (5) Shall have sales of prepared and/or packaged foods, in a ready to consume state, in excess of thirty (30) percent of the total gross receipts for such establishment during any month. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment’s kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) any other product, item, entertainment, service, or gratuity which is not specified in this subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for such establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection, the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina;

- (6) Records related to the sale of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be maintained on premises for not less than one (1) year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the zoning enforcement officer. The zoning enforcement officer may view the records on the premises of the establishment or may request copies of such written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this subsection shall be for the purpose of determining compliance with subsection (5) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the zoning enforcement officer shall constitute a violation of the zoning regulations.
- (7) A lighting plan shall be submitted to the director of community development, or authorized agent for review and approval and lighting fixtures shall be installed and maintained pursuant to such approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the director of community development, or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104.
- (8) A parking plan which conforms to the provisions of Article O., Parking, shall be submitted to the director of community development, or authorized agent for site plan review and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(2) shall not apply to a dining and entertainment establishment and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote parking facility in accordance with section 9-4-250.

**AMENDED SECTION – include new subsection (o)1 concerning records retention (applicable to conventional and fast food restaurants in any zone)**

(o)1. Restaurant; conditional and/or restaurant; fast food

- (1) Records related to the sale of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be maintained on premises for not less than one (1) year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the zoning enforcement officer. The zoning enforcement officer may view the records on the premises of the establishment or may request copies of such written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready to consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this section shall be for the purpose of determining the portion of sales attributed to the sale of prepared and/or packaged food in a ready to consume state. Failure to provide all records required by this section in a timely manner, to be determined by the city, upon written request of the zoning enforcement officer shall constitute a violation of the zoning regulations.

**Sec. 9-4-252. Schedule of required parking spaces.**

**AMENDED SECTION – to delete reference to the number of employees and specify applicable activity area for purposes of determining the minimum number of parking spaces**

(50) Public or private club

1 space for every 50 square feet of activity area including any dining area, hallway, restroom, dance floor, bar and other area accessible by the patrons of the establishment.

**NEW SECTION – parking standard for new use (same as public/private club)**

(50)1. Dining and entertainment establishment

1 space for every 50 square feet of activity area including any dining area, hallway, restroom, dance floor, bar and other area accessible by the patrons of the establishment.

**Sec. 9-4-78. Table of Uses. (proposed: S = special use and P = permitted use)**

**NEW SECTION m(1) – DINING AND ENTERTAINMENT ESTABLISHMENT  
TABLE OF USE LISTING**

|       |   | (6) Recreational/Entertainment. |              |              |             |             |             |             |             |             |        |        |        |        |        |             |             |    |   |    |     |    |    |    |    |   |         |    |  |
|-------|---|---------------------------------|--------------|--------------|-------------|-------------|-------------|-------------|-------------|-------------|--------|--------|--------|--------|--------|-------------|-------------|----|---|----|-----|----|----|----|----|---|---------|----|--|
| USE   |   | LU<br>C#                        | R<br>A<br>20 | R<br>15<br>S | R<br>9<br>S | R<br>6<br>S | R<br>6<br>N | R<br>9<br>6 | R<br>6<br>A | R<br>6<br>H | M<br>I | M<br>S | M<br>O | M<br>G | M<br>R | M<br>C<br>H | M<br>R<br>S | OR | O | CD | CDF | CG | CN | CH | IU | I | PI<br>U | PI |  |
| m     | Public or private club  | 4                               |              |              |             |             |             |             |             |             |        |        |        |        |        |             |             |    |   |    | S   | S  | S  |    | S  |   |         |    |  |
| m (1) | Dining and entertainment establishment (see also Section 9-4-103) | 4                               |              |              |             |             |             |             |             |             |        |        | S      | S      | S      |             | S           |    | S |    | S   | S  | P  | S  | P  | P | P       | P  |  |

**AMENDED SECTION j – RESTAURANT AND/OR DINING AND ENTERTAINMENT ESTABLISHMENT; REGULATED OUTDOOR ACTIVITIES TABLE OF USE LISTING**

|     |  | (10) Retail Trade. |              |              |             |             |             |             |             |             |        |        |        |        |        |             |             |    |   |    |     |    |    |    |    |   |         |    |
|-----|--|--------------------|--------------|--------------|-------------|-------------|-------------|-------------|-------------|-------------|--------|--------|--------|--------|--------|-------------|-------------|----|---|----|-----|----|----|----|----|---|---------|----|
| USE |  | LUC#               | R<br>A<br>20 | R<br>15<br>S | R<br>9<br>S | R<br>6<br>S | R<br>6<br>N | R<br>9<br>6 | R<br>6<br>A | R<br>6<br>H | M<br>I | M<br>S | M<br>O | M<br>G | M<br>R | M<br>C<br>H | M<br>R<br>S | OR | O | CD | CDF | CG | CN | CH | IU | I | PI<br>U | PI |
| h.  | Restaurant; conventional (see also Section 9-4-103)                                    | 3                  |              |              |             |             |             |             |             |             |        |        | S      | S      | P      |             | P           |    | S |    | P   | P  | P  | P  | P  | P | P       | P  |
| i.  | Restaurant; fast food (see also Section 9-4-103)                                       | 4                  |              |              |             |             |             |             |             |             |        |        |        | S      | P      |             | P           |    |   |    | P   | P  | P  | S  | P  | P | P       | P  |
| j.  | Restaurant and/or dining and entertainment establishment; regulated outdoor activities | 4                  |              |              |             |             |             |             |             |             |        |        | S      | S      | S      |             | S           |    | S |    | S   | S  | S  | S  | S  | S | S       | S  |

Doc# 790079 Community Development Department

ORDINANCE NO. 08-\_\_  
AN ORDINANCE AMENDING THE ZONING ORDINANCE  
OF THE CITY OF GREENVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Greenville, North Carolina, in accordance with Article 19, Chapter 160A, of the General Statutes of North Carolina, caused a public notice to be given and published once a week for two successive weeks in The Daily Reflector setting forth that the City Council would, on June 12, 2008 at 7:00 p.m., in the City Council Chambers of City Hall in the City of Greenville, NC, conduct a public hearing on the adoption of an ordinance amending the City Code; and

WHEREAS, in accordance with the provisions of North Carolina General Statute 160A-383, the City Council does hereby find and determine that the adoption of the ordinance involving the text amendment is consistent with the adopted comprehensive plan and that the adoption of the ordinance involving the text amendment is reasonable and in the public interest due to its consistency with the comprehensive plan and, as a result, its furtherance of the goals and objectives of the comprehensive plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES HEREBY ORDAIN:

Section 1: That Title 9, Chapter 4, Article B, Section 9-4-22, of the City Code, is hereby amended to delete subsection “(2)” of the definition of “Restaurant, conventional” in its entirety and substitute the following subsection “(2)” as follows:

- “(2) Meets one (1) or more of the following criteria: (i) has monthly sales of prepared and/or packaged food in a ready to consume state in excess of fifty (50) percent of the total gross receipts for such establishment, or (ii) has monthly sales of prepared and/or packaged food in a ready to consume state in excess of thirty (30) percent of the total gross receipts for such establishment and such sales are not less than seventy-five thousand dollars (\$75,000.00) for such establishment for each quarter-year period of each year. For the purpose of this subsection (2), quarter-year periods shall be as follows: (i) January, February, and March, (ii) April, May, and June, (iii) July, August, and September, and (iv) October, November, and December. When a restaurant establishment is in operation for less than any quarter-year period, the minimum amount of the sales of prepared and/or packaged food requirement during that quarter-year period shall be reduced from seventy-five thousand dollars (\$75,000.00) so that it is directly proportional to the number of days of operation during that quarter-year period in comparison to the number of days during that quarter-year period. For purposes of this subsection (2), days of operation shall be the total number of days, including all weekdays, between and including the date of initial operation during that quarter-year period and the last date of that quarter-year period. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the

establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, (iv) a membership, cover or other minimum charge for admittance or service during regular or special periods of operation, and (v) any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection (2), the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.”

Section 2: That Title 9, Chapter 4, Article B, Section 9-4-22, of the City Code, is hereby amended to delete subsection “(2)” of the definition of “Restaurant, fast food” in its entirety and substitute the following subsection “(2)” as follows:

“(2) Has monthly sales of prepared and/or packaged food in a ready to consume state in excess of fifty (50) percent of the total gross receipts for such establishment. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, (iv) a membership, cover or other minimum charge for admittance or service during regular or special periods of operation, and (v) any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection (2), the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.”

Section 3: That all ordinances and sections of ordinances in conflict with this ordinance are hereby repealed.

Section 4: That this ordinance shall become effective upon its adoption.

ADOPTED this 12<sup>th</sup> day of February, 2009.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

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Wanda T. Elks, City Clerk

**Excerpt from the Draft Planning and Zoning Commission meeting minutes (4/15/08)**

**REQUEST BY JEREMY SPENGE MAN (as amended by the applicant) – DENIED**

Request by Jeremy Spengeman to amend the definition of “conventional restaurant”, for purposes of qualifying as a principal use restaurant under the zoning regulations, to reduce the minimum sales requirement of prepared and/or packaged foods, in a ready-to-consume state, during any month, from more than fifty (50) percent of total gross receipts in all cases to either (i) more than fifty (50) percent of total gross receipts or (ii) has monthly sales of prepared and/or packaged food in a ready to consume state in excess of thirty (30) percent of the total gross receipts for such establishment and such sales are not less than seventy-five thousand dollars (\$75,000.00) for such establishment for each quarter-year period of each year, and to include specific criteria for determining which sales can be attributed in the portion of sales of prepared and/or packaged food in a ready to consume state in the definitions for conventional restaurant and fast food restaurant.

Chairman Tozer stated that a public hearing was held in February for this request. Adjustments were requested and made. Another public hearing was held in March with additional adjustments requested. Chairman Tozer stated he did not believe there was a need to hold another public hearing. He gave the commission members an opportunity to ask Harry Hamilton any questions. No questions were asked. Chairman Tozer opened the discussion to the board. Mr. Ramey stated he felt it would be wrong to change the criteria given that the city and the people in the community were against it.

Motion was made by Mr. Baker to approve the proposed amendment, to advise that it is consistent with the comprehensive plan or other applicable plans, and to adopt the staff report which addresses plan consistency and other matters. Motion was seconded by Mr. Randall. Bell, Baker, Lehman and Randall voted in favor of the request. Gordon, Moyer, Wilson and Ramey voted in opposition to the request. Chairman Tozer cast the tiebreaker vote in opposition of the motion to approve the amendment. Motion to approve failed 5 to 4.

City Attorney Dave Holec asked for a reverse motion to deny the request.

Mr. Ramey made a motion to deny the proposed amendment, to advise that it is inconsistent with the comprehensive plan or other applicable plans, and to adopt the staff report which addresses plan consistency and other matters. Motion was seconded by Mr. Moyer. Gordon, Moyer, Wilson and Ramey voted in favor. Bell, Baker, Lehman and Randall voted in opposition. Chairman Tozer cast the tiebreaker vote in favor of the motion to deny the amendment. Motion to deny passed 5 to 4. The request is therefore recommended for denial.

**[See the 3/18/08 Planning and Zoning Commission public hearing minutes – pg 2]**



**Excerpt from the Planning and Zoning Commission meeting minutes (3/18/08)**

**REQUEST BY JEREMY SPENGE MAN (as amended by applicant) - CONTINUED TO THE APRIL 15, 2008 MEETING**

Request by Jeremy Spengeman to amend the definition of “conventional restaurant”, for purposes of qualifying as a principal use restaurant under the zoning regulations, to reduce the minimum sales requirement of prepared and/or packaged foods, in a ready-to-consume state, during any month, from more than fifty (50) percent of total gross receipts in all cases to either (i) more than fifty (50) percent of total gross receipts or (ii) more than thirty (30) percent of total gross receipts and such sales are not less than twenty thousand dollars (\$20,000.00), for such establishment for each month, and to include specific criteria for determining which sales can be attributed in the portion of sales of prepared and/or packaged food in a ready to consume state in the definitions for conventional restaurant and fast food restaurant.

This amendment was continued from the February Planning and Zoning meeting. Mr. Hamilton read the substitute amendments for consideration. Mr. Hamilton stated that staff had revised the ordinance and the ordinance amendment report to reflect those changes. Mr. Hamilton stated the following items could be used in determining the portion of sales to be attributed to the sale of foods in a ready-to-consume state: food prepared in the establishment’s kitchen and served as a meal to be consumed on the premises or as a take-out order, packaged foods sold to accompany the meal and non-alcoholic beverages sold to accompany the meal. Mixed alcoholic beverages, including the mixer, any other alcoholic beverages, grocery items not ordered and purchased with the meal, a membership cover or other charge for admittance, and any product, item, entertainment, service or gratuity are not to be included in the sales. Mr. Hamilton stated the \$20,000 food sales rule was based on an estimated average of food sales per month. Mr. Hamilton gave comparisons to other similar restaurants, noting that the \$20,000 food sales requirement was significantly lower than the food sales of Buffalo Wild Wings and Pirates Pub.

Mr. Randall asked how many seats were in Pirates Pub. Mr. Hamilton stated he did not know exactly how many seats it held; however, it was not as large as Dr. Unk’s.

Attorney Phil Dixon, representing the applicant, spoke on behalf of the request.

Mr. Dixon stated the applicant was one of several owners of Dr. Unk’s and Basil’s restaurants. Mr. Dixon stated that neither restaurant had ever had any ABC citations nor had Basil’s had any city citations. He stated that Dr. Unk’s had recently received a city citation and promptly paid the \$50 fine. Mr. Dixon stated that the other university cities in North Carolina have the 30% rule that they are proposing. Mr. Dixon clarified that the request was not for \$20,000/month, but for \$250,000/year, of food sales. Mr. Dixon stated that a number of restaurants in the area are not meeting the rule that have not been cited and felt they were being treated unfairly. Mr. Dixon stated that Dr. Unk’s was in the top 10 purchasers of Cisco Foods for the Greenville area. Mr. Dixon stated in order to stay in business, they could reduce the cost of alcoholic beverages to meet the 50% rule,

but felt that was the opposite of what the city wanted and would encourage people to drink more. Mr. Dixon stated he felt the request was reasonable.

Mr. Baker asked if any complaints had been reported on the restaurant.

Mr. Dixon stated they had not, other than the recent citation from the city regarding the 50% rule.

Mr. Baker asked if Mr. Dixon had met with the city staff since the last meeting.

Mr. Dixon stated he had not, yet he had requested information from Mr. Hamilton and it had been submitted to him.

Mr. Baker asked what percentage of food sales was achieved.

Mr. Spengeman as well as Mr. Hamilton stated it was just over 30%.

Mr. Hamilton stated the city had a formula and it was stated in the ordinance and the existing regulations were included in the report. In order to qualify as a restaurant you must have more than 50% of your total gross receipts from the sale of food. Mr. Hamilton stated that the city's ordinance included language directly from the ABC regulations. Mr. Hamilton also stated that all businesses that sell alcoholic beverages are required to maintain 3 full years of records on the premises and the ABC Commission can check this at any time.

Mr. Ramey asked if Mr. Hamilton considered the current ordinance adequate.

Mr. Hamilton stated he did. He stated that the city did not go out on a monthly basis and check to see if people are meeting the standards unless there was an operational complaint. A number of restaurants had been checked in the last two years and a significant number had applied for Special Use Permits because they were in zones that allowed public clubs. Mr. Hamilton stated the city had received a number of complaints that Dr. Unk's was charging an admission charge. He stated that the zoning for this restaurant does not allow for the Special Use Permit for the public/private club. Mr. Hamilton stated in staff's opinion this was a zoning issue and this area did not allow this type of use for this zoning. Mr. Hamilton stated the city recommends staying with the 51% rule.

Mr. Tozer asked Mr. Hamilton if he was comfortable with the way the amendment was worded.

Mr. Hamilton stated that the substitute amendment put in the \$20,000 exemption in order to monitor the food sales on a monthly basis.

Mr. Moyer stated he felt food sales would fluctuate during certain months due to the city being a university town, which may affect the monthly totals.

Mr. Hamilton stated the city would issue a warning prior to issuing a citation and that being out of compliance for 30 days was not the issue. He stated that Dr. Unk's had been out of the 50% threshold for some time.

Mr. Randall asked if excluding the office and medical districts would be appeasable.

Mr. Hamilton stated that would exclude the restaurants from those districts and would be counterproductive.

Jeremy Spengeman, applicant, spoke in favor of the request. Mr. Spengeman stated he wanted to be responsible and work with the city to resolve the problem and stay in business.

Mr. Wilson asked Mr. Spengeman if he was aware of what could happen when he opened the restaurant in a neighborhood zone.

Mr. Spengeman said he was not, and had he known, he would have contacted an attorney prior to purchasing the property.

Jean Winstead spoke in favor of the request.

Linda Vlahos, business partner to Jeremy Spengeman, spoke in favor of the request.

John Gresham spoke in opposition to the request.

Mr. Baker asked if there had been any complaints with the neighbors.

Mr. Gresham stated that they did have disruptions late at night.

Mrs. Basnight asked what time the restaurant closed.

Mr. Spengeman replied that they closed at 2 a.m.

Chris Mansfield, president of the Tar River University Neighborhood Association, spoke in opposition to the request.

Myron Casper spoke in opposition to the request.

Mr. Dixon spoke in favor in rebuttal. Mr. Dixon stated that the request was for 30% or food sales of \$250,000, not \$20,000/month and stated that the board should be voting on the \$250,000, not the \$20,000/month.

Mr. Wilson asked Mr. Dixon if the city records had been checked.

Mr. Dixon stated they had and no complaints were found.

Mr. Mansfield spoke in opposition in rebuttal.

Mr. Tozer closed the public hearing.

City Attorney Dave Holec stated the amendment was made at \$250,000/year and was translated by the staff to \$20,000/month in order to make it more enforceable. Mr. Holec stated that Mr. Hamilton did send the draft with the \$20,000 exemption to Mr. Dixon several weeks before the meeting and had not heard back from Mr. Dixon. Mr. Holec stated that the board could vote on the \$20,000/month or the \$250,000/year, depending on what the applicant wanted.

Mr. Ramey asked if he was correct in thinking that the board could not change what was presented.

Mr. Holec said that was correct and that is what they were trying to clarify.

Mr. Dixon stated either was acceptable to the applicant.

Mr. Bell asked if the discussion could be tabled.

Mr. Dixon stated he was in favor of tabling the discussion in order to get the wording right.

Mr. Ramey made a motion to carry the request forward for another month. Motion was seconded by Mr. Bell. Motion carried unanimously.

**Excerpt from the Planning and Zoning Commission meeting minutes (2/19/08)**

**REQUEST BY JEREMY SPENGE MAN – CONTINUED TO THE MARCH 18, 2008 MEETING**

Request by Jeremy Spengeman to amend the definition of “conventional restaurant” to reduce the minimum sales requirement of prepared and/or packaged foods, in a ready-to-consume state, during any month, from fifty (50) percent of total gross receipts to thirty (30) percent of total gross receipts, for purposes of qualifying as a principal use restaurant under the zoning regulations.

TO: Mayor and City Council Members

FROM: David A. Holec, City Attorney

DATE: August 29, 2008

SUBJECT: Possible Preemption of Zoning Ordinance Definition of Restaurant

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At its August 11, 2008, meeting, City Council continued the request of Jeremy Spengeman to amend the definition of a conventional restaurant in the Zoning Ordinance so that a review could be completed as to the City's authority relating to its current definition of a restaurant in the Zoning Ordinance. The review was to focus upon the portion of the definition in the Zoning Ordinance which specifies a different percentage of the minimum food sales than the percentage established by State statute for restaurants which have obtained an ABC permit. The review was initiated as a result of the NC ABC Commission's assertion that the Zoning Ordinance definition of a restaurant which specifies a certain percentage of food sales required for an establishment to qualify as a restaurant that is different than the percentage established by State statute for the purpose of receiving an ABC permit is preempted by the State statute.

In summary, although there is a substantial argument to support an assertion that there is a preemption of the City's definition of a restaurant as a result of the State statutory definition for ABC permit purposes, there is also a valid legal argument to refute an assertion that there is such a preemption. There has been no conclusive determination that the City's authority to define a restaurant in this manner is preempted. A conclusive determination would result from an enforcement action by the City if a defense to the enforcement action asserted the issue of preemption. In my opinion, the City could prevail in its enforcement action and overcome a defense that there is preemption, however, such a result is not guaranteed.

#### State Regulation of Alcohol Sales

The North Carolina General Assembly has established the laws relating to the sale of alcohol by the adoption of Chapter 18B of the North Carolina General Statutes. G.S. 18B-100 states that the intent of Chapter 18B is to "establish a uniform system of control over the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages in North Carolina" and that "except as provided in Chapter 18B, local ordinances establishing different rules on the manufacture, sale, purchase, transportation, possession, consumption, or other use of alcoholic beverages, or requiring additional permits or fees, are prohibited."

G.S. 18B-801 provides that the ABC Commission issues all ABC permits and that the Commission has the sole power to determine the suitability and qualifications of an applicant for

a permit and also has the authority to determine the suitability of the location to which the permit may be issued.

G.S. 18B-901 further provides that when the Commission issues a permit, it is to be satisfied that the applicant is a suitable person for the permit and that the location is a suitable place for the permit and that a factor that the Commission shall consider in making these determinations is the zoning laws. Although the Commission is to consider zoning laws, it is not required to follow them in making permitting decisions.

### City Zoning Authority

The City's authority to act is derived from action by the North Carolina General Assembly. G.S. 160A-381 specifically grants to the City zoning authority including the authority to regulate the location and use of buildings, structures, and land. G.S. 160A-382 specifically authorizes the City to divide its territorial jurisdiction into districts in which a variety of uses are permissible and in which the use of buildings, structures, or land are regulated.

There are limitations on City ordinance making power even when there is a specific grant of authority. G.S. 160A-174 provides that a City ordinance must be consistent with the laws of North Carolina and that an ordinance is not consistent with the laws of North Carolina when the ordinance purports to regulate a field for which a State statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.

### State Definition of Restaurant

G.S. 18B-1000(6) defines a restaurant, for ABC permit purposes, as an establishment substantially engaged in the business of preparing and serving meals with the gross receipts from food and nonalcoholic beverages to be not less than 30% of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. The 30% rule was established by a 2003 Act of the General Assembly. Prior to 2003, the percentage was established by a 1994 Act of the General Assembly to be not less than 40%. Prior to 1994, the statutory provision was that the establishment's gross receipts from food and nonalcoholic beverages shall be greater than the gross receipts from alcoholic beverages.

### Zoning Ordinance Definition of Restaurant

As it relates to the percentage sale of food, the Zoning Ordinance defines a restaurant as an eating establishment open to the general public which has sales of prepared and/or packaged food in a ready to consume state in excess of fifty percent (50%) of the total gross receipts for such establishment during any month. In addition to the higher percentage, the Zoning Ordinance differs from the State ABC permit definition in that the percentage applies to all gross receipts not just to sales of food and beverages (both alcoholic and nonalcoholic) and that it is neutral as to alcohol by its express terms in that it does not specify alcohol sales as being limited. So, for example, this definition would be applied to an establishment which sells prepared food and other items but not alcoholic beverages so that it would not be classified as a restaurant if the sales of prepared foods was less than 50% – such as Barnes and Nobles Bookstore (with its café

in the book store) or Target (its small eating area in a department store) or Carmike Movie Theatre (with its concession stand in the theatre). Conversely, an establishment which sells prepared food and other items but not alcoholic beverages would still be classified as a restaurant provided that its sales of prepared foods is greater than 50% - such as Cracker Barrel (with its gift shop in a restaurant).

In addition to the percentage of food sales requirement, the Zoning Ordinance definition of a conventional restaurant also contains other provisions which are not included in the definition of a restaurant for ABC permit purposes. This includes provisions relating to providing table cleaning and clearing (busboy) services, not offering drive-in attendant services, and not charging a minimum charge for admittance (cover charge).

The purpose of the definition is to ensure that the principal purpose of the establishment which wants to qualify as a restaurant is to provide food service.

### City Position Through the Years

The Zoning Ordinance definition of a restaurant relating to the 50% percentage has been in effect since 1991. At that time, the State definition of a restaurant for ABC permit purposes required that an establishment's gross receipts from food and nonalcoholic beverages were to be greater than its gross receipts from alcoholic beverages. When the State changed its definition of restaurant for ABC permit purposes to 40% in 1994 and 30% in 2003, there was a deliberate decision administratively to not propose an amendment to the Zoning Ordinance definition to comply with the State's definition. In applying the Zoning Ordinance, the City's position has been that the Zoning Ordinance definition of restaurant can be enforced as it relates to the permissible location of a restaurant. The City's position has been that the State's current lower percentage provided by ABC law has no direct relation to the establishment or qualification of a principal use under zoning and should not be utilized to determine the establishment of a restaurant. The City acknowledges that the State has a complete system for regulating the sale and consumption of alcoholic beverages and, as a result, the City cannot regulate alcohol sales. The City's position is that the City may, however, define a restaurant for the purpose of zoning regulations, and this local zoning authority does not override or conflict with the State's definition of restaurant for the sale of alcohol. In other words, the State's definition of restaurant and regulation of alcohol sales and the City's definition and regulation of a restaurant are independent in purpose and application.

### Court Decisions

Two North Carolina Court decisions have prohibited local governments from imposing zoning restrictions on alcohol sales which are more restrictive than those applied by State law. In the Stanly v. Winston-Salem case, it was decided that a City ordinance could not override a State provision which allowed wine sales. In this case, the City ordinance said that a business which is nonconforming from a zoning perspective could not sell wine. In Melkonian, the Court determined that the decision by the ABC Commission to grant a permit for alcohol sales preempted a City's decision to deny a special use permit to operate a tavern and the resulting non-issuance of a city beer permit. The basis of these decisions is that local ordinances are

preempted by State law when the State law provides a complete regulatory scheme relating to the sale of alcohol. However, both of the local regulations determined to be preempted specifically addressed the sale of alcohol - - - the sale of wine in one case and the operation of a tavern and the non-issuance of a city beer permit in the other case.

### Preemption

Unless either Mr. Spengemen complies with the City's Zoning Ordinance or City Council determines to amend its Zoning Ordinance definition of a restaurant so that the percentage of food sales coincides with the State's percentage for ABC permit purposes, preemption of the City's Zoning Ordinance definition is an issue which will ultimately be addressed in this matter. The issue of preemption can be raised as a defense if the City proceeds with an enforcement action to secure compliance with the terms of the current ordinance. The issue will be the scope of the preemption. In this case, the issue will be whether the preemption extends to a provision of a zoning ordinance which is neutral on the issue of alcohol sales and does not prohibit alcohol sales. Preemption should not be for all zoning ordinance provisions (such as parking requirements, setbacks, etc.) and should not be for all ordinances (such as the noise ordinance, anti-littering ordinance, etc.). Preemption may only be limited to ordinances which regulate alcohol sales and which are the subject of statutory and regulatory provisions of the ABC Commission.

### Purpose of Regulation

The purpose of the definition of a restaurant in the Zoning Ordinance is to ensure that the establishment which is classified as a restaurant is truly a restaurant. This is because of the consequences which result from determining that a particular establishment is a restaurant - - - it can be located in certain areas where a restaurant is appropriate but which may not be appropriate for a different use which has more of an impact on adjacent uses and the neighborhood within which its located. This would include the amount of activity at the location, the parking demands, the noise generated, the litter generated, and similar issues. Although the ABC Commission has the authority to regulate alcohol sales, regulations relating to the proper location of a restaurant and other more intensive uses is properly regulated by zoning ordinances established by the local government. The impacts caused by an establishment which has as its principal purpose providing food service are different than an establishment which has as its principal purpose providing entertainment service while both such establishments may or may not sell alcoholic beverages. Zoning regulations are designed to address these differing impacts with one of the purposes of zoning being to ensure that the community's land uses are properly situated in relation to one another so that one use does not become a nuisance for its neighbors.

### Discussion with Other Authorities

I have spoken with the NC ABC Commission Chief Counsel Fred Gregory concerning the preemption issue in this matter. Mr. Gregory expressed to me his opinion that the City's Zoning Ordinance provision relating to the percentage of food sales which an establishment is to have to



qualify as a restaurant is preempted by the statutory definition of a restaurant for ABC permit purposes.

Additionally, I have spoken with David Owens of the UNC School of Government concerning the preemption issue in this matter. Professor Owens expressed to me his opinion that the scope of the preemption by ABC laws has not been clearly established by statute or court decisions and that a provision similar to the City's Zoning Ordinance provision relating to the percentage of food sales which an establishment is to have to qualify as a restaurant may be able to withstand a challenge of preemption by the statutory definition of a restaurant for ABC permit purposes.

### Options

The options for City Council in this matter are as follows:

- (1) Initiate an amendment to the City's Zoning Ordinance definition of a restaurant so that the percentage of food sales coincides with the State's percentage for ABC permit purposes. If this is done, Council may also want to consider initiating an amendment to the Zoning Ordinance which will delete a restaurant as a permitted use in the CN Neighborhood Commercial District. Existing establishments would be allowed to continue to operate as non-conforming uses but new restaurants at other locations would not be able to be established as a result of the City being able to state on the Zoning and Compliance Form which is submitted to the ABC Commission in connection with the ABC permit application process that a restaurant is not in compliance with its zoning regulations.
- (2) Approve the amendment proposed by Mr. Spengeman. If the proposed amendment is approved, then Mr. Spengeman's establishment will be in compliance.
- (3) Deny the amendment proposed by Mr. Spengeman. If the proposed amendment is not approved and Mr. Spengeman's establishment and other establishments do not comply with the terms of the existing ordinance, then enforcement actions by the City would be initiated. An enforcement action would be a civil suit in Pitt County Superior Court seeking an order that the property be brought into compliance with the provisions of the Zoning Ordinance.

**Below is the original explanation concerning the applicant's request to amend the definition of conventional restaurant.**

In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: (i) food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal.

The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, (iv) a membership, cover or other minimum charge for admittance or service during regular or special periods of operation, and (v) any other product, item, entertainment, service, or gratuity which is not specified as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state. For purposes of determining compliance, the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.

This proposed "food sales percentage requirement" amendment only applies to the definition of "conventional restaurant" and does not affect or change the definition of "fast food restaurant". For an establishment to qualify as a fast food restaurant, such establishment will require sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of fifty (50) percent of the total gross receipts for such establishment during any month.

Under the zoning regulations, the primary distinction between a "restaurant" and a "public or private club" is the minimum percentage of food sales to total sales requirement applicable to restaurants and the option of a "club" to require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation.

The prohibition of charging a membership or admittance fee and the minimum percentage of food sales to total sales requirement for restaurants is included under subsections (1) and (2) of the City's definition of restaurant (conventional and fast food). The proposed ordinance will not delete or modify subsection (1) – restaurants will not be permitted to charge a membership or admittance fee under any circumstances. Under the proposed ordinance, a public or private club may continue to charge a membership or admittance fee.

Zoning regulations typically regulate land use activities as either "principal use" or "accessory use". A "principal use" is simply defined as "the primary purpose for which a building, structure or lot is designed, arranged or intended". An "accessory use" is defined by its association with an on-site principal use, specifically by combination of

several criteria including (i) dependent to, (ii) incidental and subordinate to, and (iii) customarily associated with, the principal use. When a second activity is located on a lot that already contains a principal use and the second activity does not qualify under the definition of “accessory use”, the second use is classified as an additional “principal use”.

More than one principal use may be located on one lot. This dual-use scenario is allowed provided both principal uses are permitted in the applicable zoning district. Dual or greater multi-principal use is a common occurrence in planned centers, such as a traditional shopping center. Each principal use may have one or more associated accessory uses, provided the principal use and accessory uses comply with the definitions for each. On the other hand, an accessory use cannot be allowed as a matter-of-right absent a permitted principal use to which it is determined to be accessory.

The qualification of a principal use is therefore based on the determination of the “primary purpose” of the structure or lot. Absent specific standards, staff would rely on the following in addition to other considerations: the comparison of (i) the percentage of building floor area and/or lot area devoted to the various uses, (ii) the percentage of employees devoted to the various uses, and the percentage of customers for each, and (iii) the percentage of total revenue of the various uses in the case of a business establishment.

For purposes of Greenville’s zoning regulations, the qualification criteria for both a “restaurant” and a “club” is further established by the definition for each use and includes a percentage of food sales to total sales standard – 50% in the case of a restaurant. For purposes of alcoholic beverage control, the State currently qualifies as a restaurant any establishment that has revenue from food sales in excess of 30% of total sales during any month. The State requirement at one time (mid-1990’s) mirrored the current City standard; however, the percentage was lowered by the State to allow more locations to qualify for a mixed beverage license under the auspices of a restaurant. Prior to State adoption of the reduced requirement, establishments not meeting the 50% rule had to qualify as a “private membership club”.

Staff is of the opinion that the State’s current 30% ABC law has no direct relation to the establishment or qualification of a principal use under zoning and should not be utilized to determine the establishment of a “restaurant”. The State has a complete system for regulating the sale and consumption of alcoholic beverages and, as a result, the City cannot further regulate alcohol sales. The City may, however, define a restaurant for the purpose of zoning regulation, and this local zoning authority does not override or conflict with the State’s definition of restaurant for the sale of alcohol. The State’s definition of restaurant and the City’s definition and regulation of restaurant are independent in purpose and application.

In summary, under the City’s zoning regulations, both “restaurant” and “public or private club” are clearly defined. A restaurant is an establishment in which the principal use is the sale and/or consumption of food – a 50% food sales requirement applies and a

minimum admittance fee or cover charge is not allowed. A public or private club is an establishment in which the principal use is entertainment and which cannot qualify under the definition of restaurant. Restaurants may sell alcoholic beverages; however, for purposes of qualification as a restaurant, the sale and consumption of alcoholic beverages is not considered a food product and does not count toward the 50% rule requirement.

The State's alcohol control agency (ABC and ALE) is responsible for periodic inspection of licensed establishments for the purpose of monitoring compliance with the State's 30% rule and other matters. The City routinely requests and receives copies of the ALE inspection reports and utilizes such information in determining the use qualification of the licensed establishments.

Conventional restaurants, as currently defined, are allowed as a permitted and/or special use in the following zoning districts: MS, MO, MCG, MCH (medical), OR (office-residential), all five (5) commercial districts and all four (4) industrial districts. Public or private clubs, as currently defined, are allowed as a special use in the following zoning districts: CD, CDF, CG, and CH (commercial) only. If the minimum food sales standard is reduced from 50% to 30%, the establishments that are currently not qualified as a restaurant solely because of the 50% rule, but which can meet the 30% rule, will then become a permitted or special use option in ten (10) additional zoning districts. Such a change will facilitate the establishment of currently considered principal use public/private clubs, under the relaxed definition of restaurant, in a greater variety of locations, many heretofore not considered appropriate for such use. Specifically, the introduction of such (30% qualified) establishments in the medical districts, the CN (neighborhood commercial), O (office only district) and all industrial districts is not in keeping with the purpose and intent of those districts.

Due to the anticipated negative impact of this proposed change, staff is of the opinion that the requested amendment is not in compliance with the comprehensive plan, and staff recommends denial of the request to amend the definition of "conventional restaurant".

The public hearing on this requested ordinance amendment was conducted on June 12, 2008. At the conclusion of the public hearing the City Council voted to continue the item to the August 14, 2008 meeting and requested staff to prepare a report providing additional information. On June 13, 2008 staff provided a memorandum to the City Council listing the additional information that had been requested during the June 12, 2008 meeting and asking the City Council to inform staff of any other information needed relative to this item. Since no other information was requested by City Council, the report was completed based on the June 13, 2008 listing and delivered to the City Council on July 25, 2008. Based on a recommendation from City staff and the concurrence of the petitioner, on August 14, 2008 the City Council continued the item to September 11, 2008. An additional public hearing on this requested ordinance amendment was conducted on September 11, 2008. City Council voted to continue the item to October 6, 2008.

Recommendation on original request to amend the definition of restaurant:

In staff's opinion, the applicant's original request to amend the definition of conventional restaurant to reduce the food sales percentage requirement is not in compliance with Horizons: Greenville's Community Plan. The Planning and Zoning Commission recommended denial of the ordinance amendment at their April 15, 2008 meeting. If City Council determines to approve the amendment request, a motion to adopt the attached ordinance will accomplish this. The ordinance includes the statutorily required statement describing whether the action taken is consistent with the comprehensive plan and explaining why Council considers the action taken to be reasonable and in the public interest. If City Council determines to deny the amendment request, in order to comply with this statutory requirement, it is recommended that the motion be as follows: Motion to deny the requested text amendment and to make a finding and determination that the denial of the text amendment request is consistent with the adopted comprehensive plan and that the denial of the text amendment request is reasonable and in the public interest due to the denial being consistent with the comprehensive plan and, as a result, the denial furthers the goals and objectives of the comprehensive plan.



**Tar River University Neighborhood Association**  
408 South Harding Street  
Greenville, N. C. 27858

January 29, 2009

Harry V. Hamilton, Jr.  
Chief Planner  
City of Greenville,  
Greenville, NC 27835

Dear Mr. Hamilton,

Thank you for the opportunity to provide additional comments on the draft ordinance to create a new use called "dining and entertainment establishment."

Representatives of the board met with Mr. Dixon and Mr. Spengeman on January 15 to discuss points of agreement and disagreement regarding the proposed ordinance and the TRUNA Board met last evening to discuss whether the comments and suggestions sent on November 21 should be modified.

As previously stated, TRUNA supports the operation of appropriate businesses in the parcels zoned neighborhood commercial on Jarvis Street. This area has historically been a vital part of our neighborhood. Overton's Market, City Market, a laundromat, an Eckerd's drug store, and Christy's Euro Pub have been well patronized by residents of the neighborhood. We strongly support existing commercial enterprise and commercial redevelopment of appropriate scale and nature at that location.

We are sensitive to the plight of Mr. Spengeman but do not feel a large night club is appropriate at the Jarvis Street location. As stated previously, TRUNA basically supports the draft ordinance prepared by staff that may allow an enterprise of limited scale and impact if it meets criteria for the granting of a Special Use Permit by the Board of Adjustment. After discussions with Mr. Spengeman and reading Mr. Dixon's letter of January 7, we understand his biggest concern is the addition of certain holidays to the list of nights he can have amplified music. We do not object to inclusion of a limited number of holiday nights, e.g. Halloween, New Years Eve, Cinco de Mayo, and St. Patrick's Day. While he asks that amplified music be allowed until 2:00 a.m. on Friday, Saturday, and holiday nights, we support the stipulation in the draft ordinance that the time be until 12:00 a.m. (midnight).

Although Mr. Spengeman and the TRUNA Board agree on most provisions of the draft ordinance, there are a few important items on which we do not. In the spirit of cooperation and moving this forward to resolution, the TRUNA Board has identified the items that are most important to preserving the character of the neighborhood. In order of importance, number one being most important, they are the following.

1. We request that the ordinance be amended to state that *"special use permits for operation of dining and entertainment establishments shall not transfer upon sale of the business."*
2. We request that the ordinance be amended to state that *"dining and entertainment establishments permitted by special use in zone CN shall not be located within 200 feet from another dining and entertainment establishment."*
3. We support the draft ordinance criteria that amplified music be allowed until 12:00 a.m. on Fridays and, Saturdays (as in the draft ordinance but to include holidays, in agreement with Mr. Spengeman's request). We request that the draft ordinance be amended to state that *"dining and entertainment establishments approved by special use in the CN zone shall not have amplified audio entertainment after 11:00 PM each Sunday, Monday, Tuesday, Wednesday and Thursday."*
4. We request that the ordinance be amended to state that *"dining and entertainment establishments authorized by the fire marshal for occupancy up to 100 patrons may be allowed in CN zones by special use permit approval of the board of adjustment."* Establishments of greater size may be appropriate in other zones. We recommend that *"dining and entertainment establishments of 100 to 200 patrons be allowed by special use permit approval of the board of adjustment in the MS, MO, MCG, MCH, OR, CD, and CDF zones. "*
5. We request that the ordinance be amended to state that *"issuance of special use permits shall be subject to review by the board of adjustments every six months after issuance."*
6. We request that the ordinance be amended to state that *"dining and entertainment establishments permitted by special use or by right in zones CN, OR, and CDF shall not employ outdoor amplified sound."*
7. We request that the ordinance be amended to state that *"dining and entertainment establishments serving more than 50 but less than 100 patrons shall be required to provide at least one private security officer during hours of operation and one hour after closing."* Establishments serving larger numbers of patrons present greater problems. We recommend that larger *"dining and entertaining establishments serving over 100 patrons shall be required to provide*

*at least two private security officer during hours of operation and one hour after closing."*

If you, other staff, or members of city council have questions or see alternatives which would better accomplish the goal of bringing and sustaining neighborhood-appropriate businesses at this location, we remain open to discussion.

Thank you.

Sincerely,

Chris Mansfield, President  
Tar River University Neighborhood Association

Copy

Merrill Flood  
Dave Holec  
Pat Dunn  
Mildred Council  
Rose Glover  
Max Joyner  
Bryant Kittrell  
Calvin Mercer  
Larry Spell  
Philip Dixon



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January 22, 2009

Harry V. Hamilton, Jr.  
Chief Planner, City of Greenville  
Community Development Department  
PO Box 7207  
Greenville, NC 27835-7207

Re: **Jeremy Spengeman - Unk's Restaurant (07-D-855.11)**

Dear Harry:

In response to your request for comments on the proposed ordinance, please be advised that we had a very good meeting with Chris Mansfield and Bert Powell and John Gresham, members of the Board of the Tar River University Neighborhood Association

In reviewing the draft Ordinance, it appears to me that, the draft Dining and Entertainment Establishment Ordinance is 98% acceptable to us and 95% acceptable to them. I think this is a very good beginning. I have previously shared with Chris Mansfield and Dave Holac, the City Attorney, the fact that we need to have amplified music until 2:00 a.m. on Friday and Saturday night, and would also like it on New Year's Eve, Halloween and if possible on St. Patrick's Day, and Cinco de Mayo. In return, we would give up the right to have amplified music on Sunday night past 11:00 p.m. We would also agree that instead of not having amplified music before 8:00 a.m. on the following morning, we would agree to no amplified music before noon every day except on Sunday when we would like to have amplified music after 11:00 a.m., since we sometimes have church services beginning 11:00 a.m. that may require the use of your amplified music system.

The current Ordinance allows a cover charge only on Friday and Sunday night with amplified music only until midnight. We would first like to ensure that we have a right to charge a cover on Friday and Saturday night and have amplified music until 2:00 a.m., but we would also like to have the ability to charge a cover during the week occasionally, if not at any time. This would allow for the option of a Comedy Club which would normally take place early certain evening. Perhaps this could be accomplished on a permit basis, granted periodically or for certain times, i.e. one (1) week night each week.

Mr. Jeremy Spengeman  
Page 2

Generally speaking, the capacity of Unk's is 290 patrons but even with a good band, Jeremy advises me that he typically has only between 100 and 200 people, and during the week, occupancy is more typically 75 people for Blues night, and rarely would he have more than 80 to 90 people for other events during the week such as a big NFL football game. We are discussing with Jeremy the possibility of having a maximum capacity during the week as a means of reassuring the neighbors.

We still believe that the City should develop a lighting plan for the area to include public lighting by the City in addition to the private lighting already currently being provided by Jeremy. Chris Mansfield has raised the issue of transferability, I have explained to Chris Mansfield, and have discussed with Dave Holec, who I believe agrees with me, that legally there can be no absolute ban on the sale of a business as a viable ongoing business concern. This would not be an issue if Jeremy were to simply transfer stock ownership to some future purchaser since the actual owner and operator of Unk's would remain the same, to wit, the corporate entity. If he actually sold the assets to a different company, the proposed Ordinance simply requires that the new owner sign a statement agreeing to be bound by the terms of the existing Special Use Permit. We believe this is sufficient especially since there is an annual review and an opportunity for revocation of the Special Use Permit if the conditions are not being met. There can be a re-hearing before the Board of Adjustment as needed.

Talking to the members of the Board with whom we met, it appears that there is really no problem with noise from amplified music at Unk's. It is only a problem for neighbors with patrons leaving the premises at 2:00 a.m. in the morning, and traveling through the neighborhood. Not all of this traffic is coming from Unk's. Obviously, some of it comes from the downtown area, and the Board of TRUNA was quick to admit that point. We propose having uniformed security officers or off duty police officers, to help control behavior and traffic when amplified music is being offered past midnight. We also agreed on an adjacency issue, that we will not further expand Unk's into any of the adjoining areas in the City Market Center.

In summary:

1. We would like to change the time period when amplified audio entertainment is allowed to 11:00 p.m. on Sunday and to midnight on Monday, Tuesday, Wednesday, and Thursday night, and will agree that there will be no amplified music the following day until at least noon (11:00 a.m. on Sunday).
2. We will agree not to have amplified audio entertainment after 2:00 a.m. on Friday and Saturday night, and not to have amplified music before noon on Saturday.
3. We would like clarification of the amplified music definition to make it clear that you are able to play your television and juke box through a master sound house speaker system.

Mr. Jeremy Spengeman  
Page 3

4. We would like the ability to charge a cover occasionally on weekdays.
5. We need assurances we currently meet all the other city requirements, such as bufferyard and set backs.

Please do not hesitate to call me if you have any questions. Best wishes.

Sincerely,

DIXON LAW GROUP, PLLC



Phillip R. Dixon

PRD:SC  
Enclosure  
FAWP\PRD\SC\LTR\SPENGE\MAN\JEREMY\UNK\12.wpd

*Elmhurst/Englewood Neighborhood Association*

*President - Richard Crisp*  
*Vice President - Thomas Rouse*  
*Treasurer - Eric Ratcliffe*  
*Secretary - Marieke Van Willigen*

January 13, 2009

Harry Hamilton, Jr.  
Chief Planner  
City of Greenville  
PO Box 7207  
Greenville, NC 27835

Dear Mr. Hamilton,

In addition to my correspondence of 11/12/08 which is on file with your office, I recommend that amplified audio entertainment be allowed no later than 10pm on Monday through Thursday and Sunday, and no later than 12pm Friday and Saturday.

Thank your for your consideration.

Sincerely,



Richard G. Crisp  
EENA President

cc. D. Holec

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January 7, 2009

David A. Holec, City Attorney  
City of Greenville  
200 West 5<sup>th</sup> Street  
PO Box 7207  
Greenville, NC 27835-7207

Re: **Jeremy Spengeman t/b/a Unk's Restuarant (07-D-855.11)**

Dear Dave:

The day after Christmas, Jeremy Spengeman contacted me to advise me that something that he just thought that we should definitely bring into discussions with the City staff and the neighborhood is the addition of certain holidays to the list of nights we can have amplified music until 2:00 a.m. His biggest concern would be New Years Eve and Halloween, but St. Patrick's Day and Cinco de Mayo are also popular holidays on which entertainment has been offered in the past. Jeremy is having a difficult time surviving the economic downturn. He has already had to change his hours and eliminate some of his entertainment. Unfortunately, he has had to eliminate entertainment on Tuesday night, Thursday night, and Saturday night. After the new year, he began to have karaoke only on Wednesdays and bands only on Friday.

Accordingly, it is extremely important that we try to get this issue resolved as soon as possible. Hopefully the economy will improve and things will be back to normal, but a resolution of this matter would be helpful. This has been an extremely time-consuming and expensive process for Jeremy, and we know that it has been a time-consuming process for the City as well. We appreciate you, Harry, and the Planning Staff's efforts and would like to find out whether a compromise is possible that everyone can support. By our acceptance of virtually all of the ordinance as originally drafted, I believe we have demonstrated our willingness compromise. I believe that the changes requested by Jeremy are very reasonable, especially since these represent reductions from what he is currently allowed to do. I look forward to hearing from you and Chris concerning the ordinance, and our proposal to also include certain holidays.

Sincerely,

DIXON LAW GROUP, PLLC



Phillip R. Dixon

PRD:KL

- cc: Harry B. Hamilton, Jr.  
Chief Planner  
City of Greenville  
Planning & Community Development  
PO Box 7207  
Greenville, NC 27835-7207
- cc: Mr. Jeremy Spengeman  
t/a Unk's  
PO Box 2577  
Greenville, NC 27836
- cc: Dr. Chris Mansfield, President  
Tar River University Neighborhood Association  
408 South Harding Street  
Greenville, NC 27836

*Glen Arthur Neighborhood*

---

**Harry Hamilton**

**From:** Melissa Tilley [tilley\_melissa@yahoo.com]  
**Sent:** Wednesday, December 31, 2008 5:00 PM  
**To:** Harry Hamilton  
**Subject:** Unk's case

Harry I am all for the changes in the ordinance I've been to Unk's many times and feel like it is a very well run establishment and is the best music venue in Greenville, by far. I am well aware that TRUNA does not want Unk's in the neighborhood and I'm well aware of their power. As long as I've lived here that has been a nightclub type of business and from my experience Unk's is much better managed than the ones before it. Melissa Tilley, Glen Arthur Neighborhood Assoc.

Item # 2

12/31/2008

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December 2, 2008

David A. Holec, City Attorney  
City of Greenville  
200 West 5<sup>th</sup> Street  
PO Box 7207  
Greenville, NC 27835-7207

Re: **Draft Ordinance to Create a New Use in the City of Greenville  
entitled "Dining and Entertainment Establishment"  
- Unk's (07-D-855.10)**

Dear Dave:

Thank you for sharing with me and my client, Jeremy Spengeman d/b/a "Unk's," the letters submitted to you by Tar River University Neighborhood Association, Elmhurst/Englewood Neighborhood Association, and Colonial Heights Neighborhood Association. I would note that a comparison by the Colonial Heights Neighborhood Association of Faces Lounge, which is a private club, with Unk's is unfair. I have discussed this matter with my client and we strongly feel that any limitations on the number of patrons would make it impossible for Unk's to continue to operate. Unk's can accommodate approximately some 295 patrons, but seldom are we at that capacity. We have no objections to a ban on outdoor amplified sound, but we believe it unreasonable to require review by the Board of Adjustment every six (6) months or to ban any transfer upon sale of business. Business partners change from time to time.

I have worked long and hard with my client to try and effect a settlement in this matter, and 95% of the new Ordinance which the Planning Staff drafted is acceptable to us. We believe that we are further and compromising by cutting back our hours from the current requirements that allows us to have amplified music until 2:00 a.m. every night. We are willing to cut back and have no amplified music after 10:00 p.m. on Sunday night, which is more stringent than the proposed Ordinance currently provides, so long as we are allowed to have amplified music until midnight on Monday through Thursday, and amplified music until the customary 2:00 a.m. on Friday and Saturday. To address the concerns of the neighbors, we are willing to have not simply uniformed security officers, but off-duty law enforcement officers, if they are available to work Friday and Saturday night from 11:00 p.m. until 3:00 a.m., to help control any crowds and help disperse patrons leaving Unk's, and to help direct traffic. We have even agreed to signage that would require patrons to vacate the parking lot.

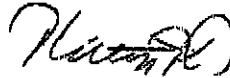


I believe we have made reasonable compromises. I remain puzzled as to why we have not had any response to our proposal from the Tar River University Neighborhood Association. I do feel as though it would be in everyone's best interest for there to be some meetings between us. I am a little distressed to learn that the Tar River University Neighborhood Association has requested time on Henry Hinton's radio/television show to stake out their position without even talking to us, after we have requested that opportunity. I also would renew my request, as set forth in my letter to you dated November 13, 2008, by fax transmission, that now that we have had an opportunity to meet with you, and Harry Hamilton, and Merrill Flood of the City Planning Staff, we might have the opportunity to sit down with Chris Mansfield and the Tar River University Neighborhood Association, and the other neighbor associations, to further discuss these issues to see if we can bring forth to the Planning & Zoning Commission and the City Council consensus on the new Ordinance.

As you have indicated to me, and I have indicated to you, I believe it would be too difficult for this to be done before the City Council meeting on December 11, 2008, and, therefore, I renew my request to the City Council to present staff presentation until the January 2009 meeting of the City Council in order for us to have the opportunity to accomplish these commendable goals. Please do not hesitate to call me if you have any questions. Best wishes.

Sincerely,

DIXON & ALLEN, PLLC



Phillip R. Dixon

PRD:SC

cc: Harry V. Hamilton, Jr.  
Chief Planner, City of Greenville  
Planning & Development  
PO Box 7207  
Greenville, NC 27835-7207

Chris Mansfield, President  
Tarboro University Neighborhood Assn.  
408 S. Harding Street  
Greenville, NC 27858

cc: Mr. Jeremy Spengeman  
PO Box 2577  
Greenville, NC 27836

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December 1, 2008

David A. Holec, City Attorney  
City of Greenville  
200 West 5<sup>th</sup> Street  
PO Box 7207  
Greenville, NC 27835-7207

Re: **Draft Ordinance to Create a New Use in the City of Greenville  
entitled "Dining and Entertainment Establishment"  
- Unk's (07-D-855.10)**

Dear Dave:

This will acknowledge our office conference of Tuesday, November 25, 2008, with you, Harry Hamilton, Merrill Flood, and my client Jeremy Spengeman d/b/a "Unk's." Please accept this letter as confirmation in writing of our comments to you that generally the draft Ordinance to create a new use, entitled "Dining and Entertainment Establishment" for the City of Greenville, is acceptable to us. I realize that you and Harry Hamilton have worked long and hard to create this new use within the City Ordinances, and we appreciate your efforts. Among other things, we accept the following:

1. A new definition for "Dining and Entertainment Establishment, including minimum food criteria (30% rule);
2. Amended definitions for "Conventional and Fast Food Restaurant," to include a clause for determining the portion of sales that can be attributed to the sale of food;
3. Special Use Permit Criteria in those cases where a "dining and entertainment establishment" is subject to a Special Use Permit Approval of the Board of Adjustment. As a subset to this provision of the Ordinance, we accept the following provisions:
  - i. A revocation clause for non-compliance with standards and conditions;
  - ii. An Annual Staff Review Report requirement;
  - iii. Permit Hearing Procedures;
  - iv. Trash and litter disposal requirements;
  - v. A Business Transfer Notice requirement;
  - vi. Cover Charge Allowance and date/time limitations, with some modifications;

David A. Holec, City Attorney  
City of Greenville  
Page 2

- vii. Amplified audio entertainment allowance and date/time limitations, with some modifications;
  - viii. A minimum food sales (30% Rule) requirement; and
  - xi. A parking plan requirement.
4. Ordinance Imposed Criteria for those cases where a "dining and entertainment establishment" is a permitted (by-right) use, is not subject to approval of the Board of Adjustment.
5. Amended definition of "Outdoor Activities" including amplified outdoor audio sound.
6. A new section requiring all restaurants to maintain food and sales records for one (1) year.
7. An amended public/private club parking standard to delete the employee based parking requirement and to specify the applicable activity area for minimum parking determination purposes.
8. A "dining and entertainment establishment" parking requirement.
9. A Table of Use Listing for "dining and entertainment establishment."

Our only proviso is that we would like to insure that, at the current time, my client's establishment, commonly known as Unk's, meets the current Exterior Lighting Plan, Buffer Yard setbacks, and Parking Plan requirements that are proposed. In this regard, we agreed that we would try to work together to insure that we jointly develop a plan for lighting of the area without this burden being placed solely upon my client. My client advises me that without the light that he pays for, this area is very dark. It would seem prudent for the City to insure that this area is well lit, and secure and safe for all of our citizens. Hopefully, together we can develop a plan that will insure the safety of patrons, and neighbors, and residents of the area without creating any light filtering onto residential properties. Our intent is simply to insure that the parking lot and streets within the area are well lighted. Since Unk's has already made arrangements with the owner of the City Market Shopping Center to use parking after hours, including the very large parking lot directly across the street from Unk's, we assume there is no parking issue. Please confirm Unk's is currently in compliance with its current Exterior Lighting Plan, Buffer Yard Setbacks, and Parking Plan.

David A. Holec, City Attorney  
City of Greenville  
Page 3

With respect to the Amplified Audio Entertainment Allowance, as we indicated to you in our office conference, we do not have individual sound systems for each of the televisions on which patrons typically watch football, basketball, baseball, and other athletic events. This is a popular pastime for patrons, but we use a master sound system for televisions so everybody is generally on the same channel, and is watching the same show; in other words, the sound system for Unk's is one master system. Harry Hamilton provided assurances that the new Ordinance would make allowances for this to continue to be used without this being a violation of the new Ordinance. Please also confirm this fact.

Subparagraph 7 of the new Ordinance states, in pertinent part, that:

For purposes of this section "amplified audio entertainment" shall mean any type of music or other entertainment delivered through and by an electronic system, provided however, televisions operating with no amplification other than their internal speakers and indoor background music system operating at a low amplification and not intended for entertainment shall not be deemed amplified audio entertainment[.]

In the case of Unk's, again there is one master sound system for all of the televisions, and we simply want to make sure that the new Ordinance is modified to account for this fact.

As you know, Unk's currently has amplified music until 2:00 a.m. in the morning, and your proposals to limit the time that Unk's has amplified music until 11:00 p.m. Monday through Thursday, and midnight Friday, Saturday, and Sunday, would make it difficult for Unk's to operate profitably. Accordingly, we would like to request that Unk's be allowed to continue to have amplified music until 2:00 a.m. on Friday and Saturday night, but will agree that Unk's will only have amplified music until 10:00 p.m. on Sunday night, and will have amplified music until only midnight on Monday, Tuesday, Wednesday, and Thursday. Currently, the Ordinance provides that Unk's and other such establishments will not have amplified audio entertainment after 11:00 p.m. each Monday, Tuesday, Wednesday, and Thursday night, or before 8:00 a.m. the following morning of the next day. It also provides that Unk's and other such establishments would not have amplified audio entertainment after 12:00 a.m. (midnight) each Friday, Saturday, and Sunday night, or before 8:00 a.m. the following morning of the next day. We propose modifying these times to have the Ordinance provide that Unk's and other such establishments will not have amplified audio entertainment after 10:00 p.m. each Sunday night, or before 12:00 p.m. (noon) the following morning of the next day, and that Unk's and other such establishments will not have amplified audio entertainment after 12:00 a.m. (midnight) each Monday, Tuesday, Wednesday, and Thursday night, or before 12:00 p.m. (noon) the following morning of the next day, and that Unk's and other such establishments will not have amplified audio entertainment after 2:00 a.m. each Friday and Saturday night, or before 12:00 p.m. (noon) the following morning of the next day. This would require that amplified audio entertainment cease one (1) hour earlier on Sunday than the current Ordinance provides, but would give Unk's one (1) additional hour to have amplified audio entertainment Monday through Thursday, and most importantly, have amplified audio entertainment two (2) additional hours on

David A. Holec, City Attorney  
City of Greenville  
Page 4

Friday and Saturday night. Again, Unk's now has amplified music until 2:00 a.m. every night.

To address any issues of the neighborhood, Unk's is willing to hire off-duty law enforcement officers (if available), or uniformed security guards if off-duty law enforcement officers are not available, to patrol the parking lot between 11:00 p.m. and 3:00 a.m. on Friday and Saturday night to avoid congregations of customers and patrons in the parking lot, and to disperse the crowd and to direct traffic. Unk's would also be willing to place signage in the parking lot that no one is allowed to remain in the parking lot after 3:00 a.m. Both my oldest son who is now a young attorney, and my middle son who is a member of the Embers Band, tell me that most patrons who enjoy live entertainment do not go out until 10:00 p.m. or 11:00 p.m. on weekends, and are generally not willing to pay a cover charge unless they can stay later than midnight. All of the venues they have visited/played have a cut-off at 2:00 a.m. Moreover, if patrons come on Friday or Saturday night, they are usually there for the evening and remain until closing.

Unk's currently operates some very popular programs during the week, including Blues Night, DJ Night, and Karaoke Night, which Jeremy Spengeman would be willing to scale back. We felt that Sunday night might be the most important night to neighbors because many people are trying to get sufficient rest to begin work on Monday morning. One of the issues raised by the neighborhood was a concern about large groups of people dispersing at 2:00 a.m. in the morning. We are proposing that the agreed presence of an off-duty police officer or other law enforcement officer, or a uniformed security guard, will help dispel and alleviate this concern.

Jeremy Spengeman's final concern is that his patrons be allowed to watch football, basketball, baseball, and other athletic events, and listen to the jukebox or other background music, since Unk's receives commercial satellite radio. Thank you for your clarification on the definition of "amplified music."

I have worked long and hard with Jeremy, and feel I have accomplished a great deal in getting him to accept a great many new requirements that have not been placed upon him before. He is willing to address some of the concerns raised by the neighbors in having someone to control his patrons when they disperse, and this is an additional cost to him, which is significant. With these minor tweaks, we can certainly support the Ordinance as drafted. Hopefully, this will help persuade the residents within the neighborhood that we are committed to a compromise and are trying very hard to find an Ordinance that works for the City and for other such establishments. Thank you for your work on this project. Please do not hesitate to call me if you have any questions. Best wishes.

Sincerely,

DIXON & ALLEN, PLLC



Phillip R. Dixon

**David A. Holec, City Attorney  
City of Greenville  
Page 5**

**PRD:SC**

**cc: Harry V. Hamilton, Jr.  
Chief Planner, City of Greenville  
Planning & Development  
PO Box 7207  
Greenville, NC 27835-7207**

**cc: Mr. Jeremy Spengeman  
PO Box 2577  
Greenville, NC 27836**

F:\WP\PRDISC\LTRS\HOLEC-DAV\UNK\4

# Chamber of Commerce

Harry Hamilton

**From:** Susanne Sartelle [Susanne@greenvillenc.org]  
**Sent:** Wednesday, November 26, 2008 1:02 PM  
**To:** Harry Hamilton  
**Subject:** ordinance

Harry,

To follow-up on our conversation from earlier this week, I just want to reiterate that the Chamber is hopeful and wants to promote in any way we can a win-win situation for the TRUNA and UNKs issue. Although neither I nor my executive committee members who discussed this last week feel qualified to offer advice on the draft ordinance, we do want to be helpful. To that end, let me offer our conference room at any time as "neutral territory" for meetings. The Chamber is often called upon to build bridges and connect persons or parties on issues or works in progress. We do hope that communication between the stakeholders can achieve a desirable outcome.

As you know, our concerns on this issue are about the greater good of business throughout Greenville, so we continue to urge you to keep that consideration in the forefront as decisions are made.

As we can help....let us know!  
Have a wonderful Thanksgiving,  
Susanne

Susanne D. Sartelle, CCE  
President  
Greenville-Pitt County Chamber of Commerce  
252-752-4101  
252-752-5934 fax  
susanne@greenvillenc.org

**CHECK OUT THE 2008 CHAMBER CHAMPIONS! GOLD- ASMO, DSM, EMBARQ, PITT COUNTY MEMORIAL HOSPITAL/UNIVERSITY HEALTH SYSTEMS OF EASTERN CAROLINA SUDDENLINK COMMUNICATIONS, SILVER-BB&T/BB&T INSURANCE, BANK OF AMERICA, MANPOWER, WARD AND SMITH, P.A., BRONZE- BLUE CROSS BLUE SHIELD OF NC, BROWN & WOOD PONTIAC-CADILLAC-BUICK-GMC, THE DAILY REFLECTOR, THE EAST CAROLINA BANK, FAULKNER & ASSOCIATES ADVERTISING, FIRST CITIZENS BANK , FIRST FLIGHT FEDERAL CREDIT UNION, THE LIZ FREEMAN TEAM, METRICS, NACCO MATERIALS HANDLING GROUP, INC., POWELL FINANCIAL, R.A. JEFFREYS DISTRIBUTING CO., SOUTHERN BANK, SOUTHERN INSURANCE AGENCY, INC., STATE FARM INSURANCE COMPANY-POLLY PILAND**



**Tar River University Neighborhood Association**  
408 South Harding Street  
Greenville, N. C. 27858

November 21, 2008

Harry V. Hamilton, Jr.  
Chief Planner  
City of Greenville,  
Greenville, NC 27835

Dear Mr. Hamilton,

Thank you for the opportunity to review the draft ordinance to create a new use called "dining and entertainment establishment.

After a committee of the board of the Tar River University Neighborhood Association (TRUNA) met with you, Mr. Holec, and Mr. Flood, and then subsequently with Mr. Kittrell, the committee evaluated the impact of the existing restaurants, provisions in the draft ordinance, and options for improving the ordinance. We previously sought input from Larry Spell. The full board considered the ordinance yesterday and voted to respond as follows.

TRUNA supports the operation of appropriate businesses in the parcels zoned neighborhood commercial on Jarvis Street. This area has historically been a vital part of our neighborhood. Overton's Market, City Market, the laundromat, an Eckerd's drug store, and Christy's Euro Pub have been well patronized by residents of the neighborhood. We strongly support existing commercial enterprise and commercial redevelopment of appropriate scale and nature at that location.

TRUNA requests a few changes in the draft ordinance that you asked us to review, mostly having to do with "dining and entertainment establishments" that would be allowed in the CN (Neighborhood Commercial) zone.

**In the AMENDED SECTION**

Section 9-4-85. Listed uses pertaining to dining and entertainment establishments subject to special use approval of the board of adjustment in the MS, MO, MCG, MCH, OR, CD, CDF and CN zones only. (page 5 and forward)

1. We request draft ordinance be amended to state that "*dining and entertainment establishments approved by special use in the CN zone shall not have amplified audio entertainment after 11:00 PM each Sunday, Monday, Tuesday, Wednesday and Thursday.*" This would modify items 6 and 7 in the draft ordinance which



would allow amplified audio entertainment on Sunday night until 12:00PM (midnight).

2. We believe there should be a limit on the size of operation as well as hours of operation that distinguish dining and entertainment establishments allowed by right or permitted by special use in various zones. We request that the ordinance be amended to state that *"dining and entertainment establishments authorized by the fire marshal for occupancy up to 100 patrons may be allowed in CN zones by special use permit approval of the board of adjustment."* Establishments of greater size may be appropriate in other zones. We recommend that *"dining and entertainment establishments of 100 to 200 patrons be allowed by special use permit approval of the board of adjustment in the MS, MO, MCG, MCH, OR, CD, and CDF zones. "*
3. We request that the ordinance be amended to state that *"dining and entertainment establishments serving more than 50 but less than 100 patrons shall be required to provide at least one private security officer during hours of operation and one hour after closing."* Establishments serving larger numbers of patrons present greater problems. We recommend that larger *"dining and entertaining establishments serving over 100 patrons shall be required to provide at least two private security officer during hours of operation and one hour after closing."*
4. We request that the ordinance be amended to state that *"dining and entertainment establishments permitted by special use in zone CN shall not be located within 200 feet from another dining and entertainment establishment."*
5. We request that the ordinance be amended to state that *"dining and entertainment establishments permitted by special use or by right in zones CN, OR, and CDF shall not employ outdoor amplified sound."*
6. We request that the ordinance be amended to state that *"special use permits for operation of dining and entertainment establishments shall not transfer upon sale of the business."*
7. We request that the ordinance be amended to state that *"issuance of special use permits shall be subject to review by the board of adjustments every six months after issuance."*

If you, other staff, or members of city council have questions or see alternatives which would better accomplish the goal of bringing and sustaining neighborhood-appropriate businesses at this location, please call me.

Thank you.

Sincerely,



Chris Mansfield, President  
Tar River University Neighborhood Association

Copy

Merrill Flood  
Dave Holec  
Pat Dunn  
Mildred Council  
Rose Glover  
Max Joyner  
Bryant Kittrell  
Calvin Mercer  
Larry Spell

# Colonial Heights Neighborhood

Harry Hamilton

---

**From:** Christie Mclawhorn [cmacsewin@gmail.com]  
**Sent:** Thursday, November 20, 2008 5:45 PM  
**To:** Harry Hamilton  
**Subject:** restaurant/ nightclub

Mr. Hamilton

Because of the problems we have had with Faces Lounge on East 10th St., we feel that loud amplified music from the business and it's patrons is the major problem. BOA is not an effective tool to be in charge of monitoring restrictions on nightclubs. The responsibility the ultimately falls on the neighborhood citizens( victims) to patrol the business.

Faces lounge is about 400 ft. from my home and I routinely hear the music in my living room on Thursday, Friday and Saturday nights from 12:00 until about 3:00. There are other residents a lot closer than I. Old buildings do not contain sound very well.

I feel that evening entertainment establishments should not be located within a residential neighborhood.

This proposal seems logical to me:

Any rest./ nightclub that is located within 500 ft. of a residential neighborhood may not use amplified music of any kind after 11:00 on weekdays and 12:00 on weekends. After 3 violations the permit is suspended.

Any rest./ lounge providing evening entertainment should have at least one security person outside during entertainment hours to make sure that all the patrons in the parking lot abide by the same rules.

Thank you for providing residents in Greenville some input on this matter.

Christie McLawhorn  
President  
Colonial Heights Neighborhood Association

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# DIXON & ALLEN, PLLC

A Professional Limited Liability Company  
110 E. ARLINGTON BOULEVARD  
GREENVILLE, NORTH CAROLINA 27858  
Established 1978

PHILLIP R. DIXON  
W. LEE ALLEN, III  
PHILLIP R. DIXON, JR.

Post Office Drawer 8668  
Greenville, N.C. 27835-8668  
Telephone (252) 355-8100  
Facsimile (252) 355-0271

November 13, 2008

David A. Holec, City Attorney  
City of Greenville  
200 West 5<sup>th</sup> Street  
PO Box 7207  
Greenville, NC 27835-7207

VIA FAX TRANSMISSION, E-MAIL, and  
US MAIL

Re: **Draft Ordinance to Create a New Use in the City of Greenville  
entitled "Dining and Entertainment Establishment"  
- Unk's (07-D-855.9)**

Dear David:

This will acknowledge our telephone conversation today, November 13, 2008. The revised Ordinance with some modifications may be acceptable to my client. I would like to confirm a time to meet with you after my return from Ireland. I am free Monday, November 24, 2008 (with the exception of a meeting from 2:30 p.m. until 3:30 p.m.) and anytime on Tuesday, November 25, 2008. I have made several suggestions to make the situation more palatable with Unk's to the Tar River Neighborhood Association, but I have received no response thus far. I would first like to meet with you and the City Planning Staff, and then sit down with Chris Mansfield and the Tar River Neighborhood Association. As you know, I will be out of town until November 22<sup>nd</sup>, and Thanksgiving is coming up shortly thereafter. I think it would be difficult to do all of this before the City Council meets again on December 11, 2008. I propose that we ask the City Council to delay the Staff presentation until the January 2009 meeting in order to accomplish these meetings. Please do not hesitate to call me if you have any questions. Best wishes.

Sincerely,

DIXON & ALLEN, PLLC



Phillip R. Dixon

PRD:SC

cc: Harry B. Hamilton, Jr.  
Chief Planner, City of Greenville  
Planning & Development  
PO Box 7207  
Greenville, NC 27835-7207

cc: Mr. Jeremy Spengeman  
PO Box 2577  
Greenville, NC 27836

F:\WP\PRDISC\LTRS\HOLEC-DAV\UNK\2

*Elmhurst/Englewood Neighborhood Association*

*President - Richard Crisp  
Vice President - Thomas Rouse  
Treasurer - Eric Ratcliffe  
Secretary - Marieke Van Willigen*

November 12, 2008

Harry Hamilton, Jr.  
Chief Planner  
City of Greenville  
PO Box 7207  
Greenville, NC 27835

Dear Mr. Hamilton,

I have reviewed the draft text for the "dining and entertainment establishments" ordinance and approve of the many safeguards for neighborhoods.

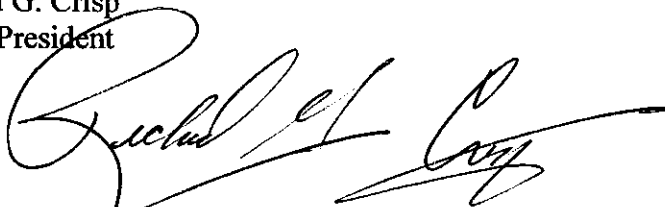
Consideration could also be given to the following:

1. Establish a buffer zone between similar establishments (suggest 200 ft).
2. Establish a maximum size requirement (sq ft) to help hold down the foot and vehicle traffic impacting local residents.
3. Require outside security during periods of live entertainment, such security to be based on a formula of a specified number of security personnel per 100 of allowed occupancy under the "life safety codes". Security personnel to remain on duty 30 minutes to 1 hour after closing. Requirements for security personnel should likely also be included (ex. Police training, etc).

Thank your for your consideration of these suggestions.

Sincerely,

Richard G. Crisp  
EENA President



cc. C. Mansfield  
M. Flood  
D. Holec



# City of Greenville, North Carolina

Meeting Date: 2/12/2009  
Time: 7:00 PM

**Title of Item:** Ordinance to annex Barfield Properties, LLC property containing 11.5837 acres located along Chapman Drive between its intersections with South Memorial Drive and Whitely Drive

**Explanation:** ANNEXATION PROFILE

A. SCHEDULE

1. Advertising date: February 2, 2009
2. City Council public hearing date: February 12, 2009
3. Effective date: June 30, 2009

B. CHARACTERISTICS

1. Relation to Primary City Limits: Contiguous
2. Relation to Recognized Industrial Area: Outside
3. Acreage: 11.5837 acres
4. Voting District: 5
5. Township: Winterville
6. Vision Area: E
7. Zoning District: CH (Heavy Commercial)
8. Land Use: Existing: Vacant  
Anticipated: Approximately 96,638 square feet of heated commercial space

9. Population:

|  | Formula | Number of People |
|--|---------|------------------|
| Total Current                          | N/A     | N/A              |
| Estimated at full development          | N/A     | N/A              |
| Current Minority                       | N/A     | N/A              |
| Estimated Minority at full development | N/A     | N/A              |
| Current White                          | N/A     | N/A              |
| Estimated White at full development    | N/A     | N/A              |

10. Rural Fire Tax District: Winterville

11. Greenville Fire District: Station #5 (Distance of 1.71 miles)

12. Present Tax Value: \$1,793,275  
Estimated Future Tax Value: \$12,903,275

**Fiscal Note:** The total estimated tax value at full development is \$12,903,275.

**Recommendation:** Approval of the ordinance to annex Barfield Properties, LLC property.

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[Survey Map](#)

[Annexation Ordinance Barfield Properties LLC 806139](#)



ORDINANCE NO. 09-\_\_\_\_  
AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF  
THE CITY OF GREENVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Greenville has been petitioned under G.S. 160A-31, as amended, to annex the area described herein; and

WHEREAS, the City Council has directed the City Clerk to investigate the sufficiency of said petition; and

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall at 7:00 p.m. on the 12<sup>th</sup> day of February, 2009 after due notice by publication in The Daily Reflector on the 2nd day of February, 2009; and

WHEREAS, the City Council does hereby find as a fact that said petition meets the requirements of G. S. 160A-31, as amended.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section 1. That by virtue of the authority vested in the City Council of the City of Greenville, North Carolina, under G. S. 160A-31, as amended, the following described contiguous territory is annexed:

To Wit:                                 Being all of that certain property as shown on the annexation map entitled "Barfield Properties, LLC" involving 11.5837 acres as prepared by Stroud Engineering, P.A.

Location:                                 Lying and being situated in Winterville Township, Pitt County, North Carolina, located along Chapman Drive between its intersection with South Memorial Drive and Whitley Drive. This annexation involves 11.5837 acres.

GENERAL DESCRIPTION: Lying and being in Winterville Township, Pitt County, North Carolina and being east of NC Highway 11, north of NCSR 1708 (Firetower Road) and being more particularly described as follows:

Beginning at the point where the eastern right-of-way of NC Highway 11 and 903, Memorial Drive intersects with the northern right-of-way of Chapman Road, said point being the southwest corner of Lot 21, Block A, Tucker Commercial & Industrial Park, Section 1 as recorded in Map 25, Pages 100-100A of the Pitt County Registry, thence from the true point of beginning, leaving the eastern right-of-way of NC Highway 11 and 903, Memorial Drive and following the northern right-of-way of Chapman Road N89-22-27E – 262.15' to a point, thence continuing along the right-of-way of Chapman Road with a curve to the right having a radius of 530.00' and being subtended by a chord of S62-14-09E – 503.99' to the southern most corner of Lot 16, Block A, Tucker Commercial & Industrial Park, Section 1, thence leaving the eastern right-of-way of Chapman Road and following the southeastern line of Lot 16 N56-09-59E – 430.62' to the southwestern boundary line of South Haven Apartments as shown in Map Book 48, Page 116, thence along the South Haven Apartments line S58-23-47E – 76.52' to the common corner of Lot 16, South Pointe, Section 1 (Map Book 63, Page 115), SDC Properties (Deed Book 828, Page 142) and Barfield Properties, LLC (Deed Book 2123, Page 6), thence along the line common to SDC Properties and Barfield Properties, LLC S02-02-30W – 61.05', thence S11-37-31E – 523.96' to the northeastern corner of the City of Greenville property (Deed Book E-53, Page 828), thence along the northern line of the City of Greenville and Tucker Farms, Inc. S89-02-38W – 461.15' to a point on the eastern right-of-way of Chapman Road, thence leaving the eastern right-of-way of Chapman Road S89-02-38W – 7.15' to an old city limit line, thence along the old city limit line N11-45-33W – 186.89' to the point of compound curvature on the opposite right-of-way of Chapman Road in the line of Brown Family Investments, LLC (Deed Book 805, Page 650), thence along the right-of-way with a curve to the left having a radius of 470.00' and being subtended by a chord of N12-47-45W – 16.95' to the common corner of the Brown Family Investments, LLC (Deed Book 805, Page 650) and Barfield Properties, LLC (Deed Book 2123, Page 6), thence leaving the western right-of-way of Chapman Road and following the common line of Brown Family Investments, LLC, Barfield Properties, LLC and PTM, LP (Deed Book 2350, Page 604) S89-00-37W – 719.75' to a point on the eastern right-of-way of NC Highway 11 and 903, Memorial Drive, the northwest corner of Lot 1 as shown in Map Book 68, Page 99, thence leaving Lot 1 and following the eastern right-of-way of NC Highway 11 and 903, Memorial Drive N00-37-31W – 367.25' to the point where the southern right-of-way of Chapman Road intersects the eastern right-of-way of NC Highway 11 and 903, Memorial Drive, also the northwest corner of Lot 3, Block B, Tucker Commercial and Industrial Park, Section 1 (Map Book 25, Pages 100-100A), thence continuing along the eastern right-of-way of NC Highway 11 and 903,

Memorial Drive N00-37-33W – 60.00’ to the true point of beginning, containing 11.5837 Acres.

Section 2. Territory annexed to the City of Greenville by this ordinance shall, pursuant to the terms of G. S. 160A-23, be annexed into Greenville municipal election district five. The City Clerk, City Engineer, representatives of the Board of Elections and any other person having responsibility or charge of official maps or documents shall amend those maps or documents to reflect the annexation of this territory into municipal election district five.

Section 3. The territory annexed and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Greenville and shall be entitled to the same privileges and benefits as other territory now within the City of Greenville. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 4. The Mayor of the City of Greenville, North Carolina, shall cause a copy of the map of the territory annexed by this ordinance and a certified copy of this ordinance to be recorded in the office of the Register of Deeds of Pitt County and in the Office of the Secretary of State in Raleigh, North Carolina. Such a map shall also be delivered to the Pitt County Board of Elections as required by G.S. 163-288.1.

Section 5. This annexation shall take effect from and after the 30<sup>th</sup> day of June, 2009.

ADOPTED this 12<sup>th</sup> day of February, 2009.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

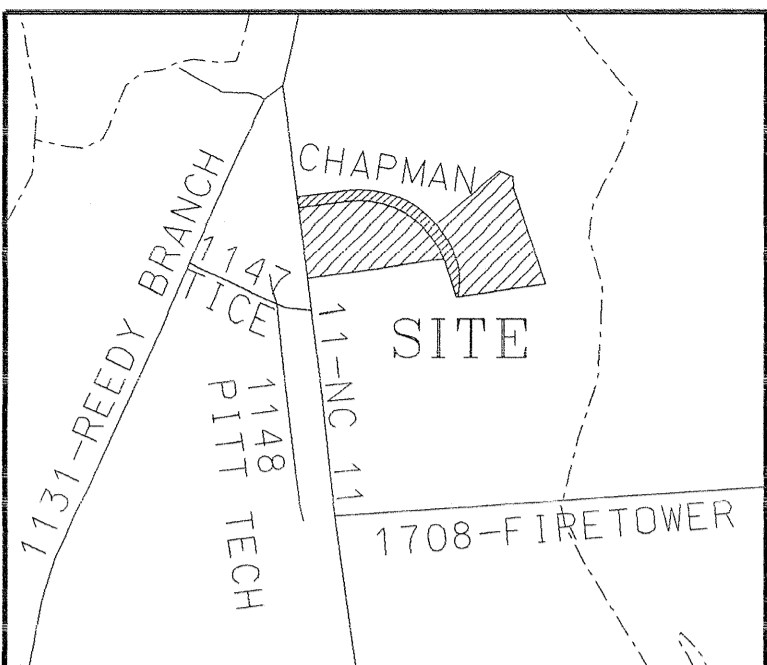
\_\_\_\_\_  
Wanda T. Elks, City Clerk

NORTH CAROLINA  
PITT COUNTY

I, Patricia A. Sugg, Notary Public for said County and State, certify that Wanda T. Elks personally came before me this day and acknowledged that she is City Clerk of the City of Greenville, a municipality, and that by authority duly given and as the act of the municipality, the foregoing instrument was signed in its name by its Mayor, sealed with the corporate seal, and attested by herself as its City Clerk.

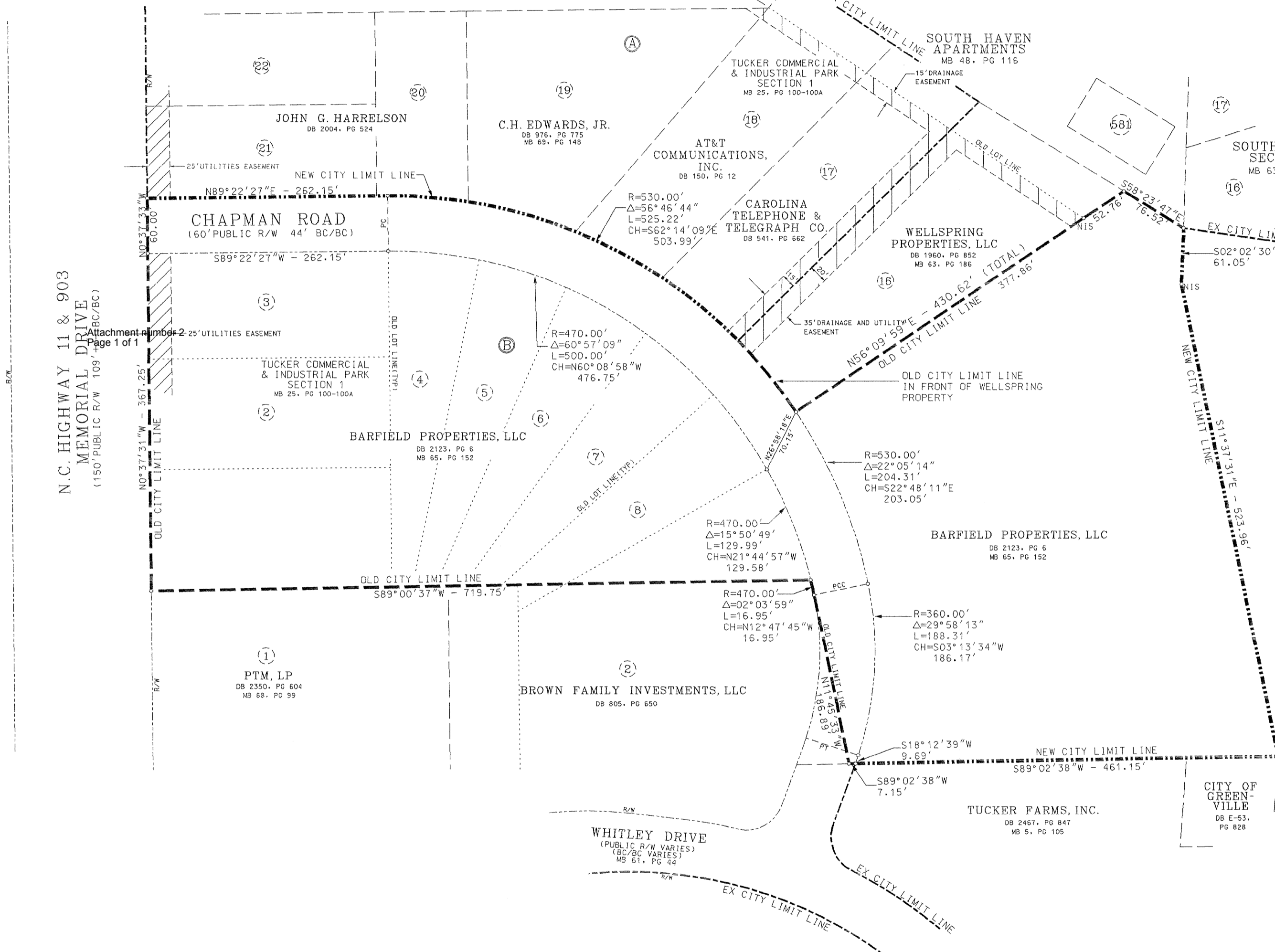
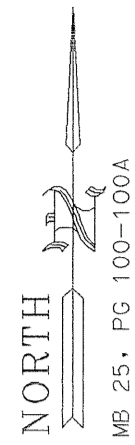
WITNESS my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Patricia A. Sugg, Notary Public



VICINITY MAP

1"=1000'



N.C. HIGHWAY 11 & 903  
MEMORIAL DRIVE  
(150' PUBLIC R/W, 109' BC/BC)  
Attachment number 2  
Page 1 of 1



SDC PROPERTIES  
DB 828, PG 142

I CERTIFY THAT THIS MAP IS OF  
A SURVEY OF ANOTHER CATEGORY  
AND IS AN EXCEPTION TO THE  
DEFINITION OF A SUBDIVISION.  
*Howard O. Barium*  
PROFESSIONAL LAND SURVEYOR

I, \_\_\_\_\_, CERTIFY THAT THIS  
MAP WAS DRAWN BY \_\_\_\_\_ UNDER  
MY SUPERVISION FROM AN ACTUAL SURVEY  
BY \_\_\_\_\_; THAT THE BOUNDARIES  
NOT SURVEYED ARE SHOWN AS BROKEN LINES  
PLOTTED FROM INFORMATION FOUND IN DEEDS  
AND MAPS REFERENCED HEREON.

WITNESS MY HAND AND SEAL THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_, 19\_\_\_\_.

SIGNED \_\_\_\_\_  
PROFESSIONAL LAND SURVEYOR L-\_\_\_\_\_

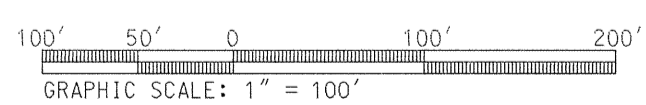
NORTH CAROLINA, \_\_\_\_\_ COUNTY  
I, \_\_\_\_\_, NOTARY  
PUBLIC OF THE COUNTY AND STATE  
AFORESAID, CERTIFY THAT \_\_\_\_\_  
A REGISTERED LAND  
SURVEYOR, PERSONALLY APPEARED BEFORE  
ME THIS DAY AN ACKNOWLEDGED THE  
EXECUTION OF THE FOREGOING INSTRUMENT.  
WITNESS MY HAND AND OFFICIAL STAMP OR  
SEAL THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_.

NOTARY PUBLIC \_\_\_\_\_  
MY COMMISSION EXPIRES \_\_\_\_\_

NORTH CAROLINA, PITT COUNTY  
THE FOREGOING CERTIFICATE OF \_\_\_\_\_  
A NOTARY PUBLIC, IS CERTIFIED  
TO BE CORRECT, FILED FOR REGISTRATION  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_ AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M.  
JUDY J. TART, REGISTER OF DEEDS  
BY \_\_\_\_\_  
DEPUTY REGISTER OF DEEDS

LEGEND

- NEW CITY LIMIT LINE
- OLD CITY LIMIT LINE
- EXISTING CITY LIMIT LINE



|  |               |                  |               |  |      |      |  |      |               |
|--|---------------|------------------|---------------|--|------|------|--|------|---------------|
| ANNEXATION MAP FOR<br><b>BARFIELD PROPERTIES, LLC</b><br>WINTERVILLE TWP., PITT COUNTY, N.C. |               | MAP NO.          | MAPS RECORDED |  | BOOK | PAGE | MAP SHOWING AREA ANNEXED BY<br><b>THE CITY OF GREENVILLE</b> |      |               |
|  |               |                  |               |  |      |      |  | DATE | ORDINANCE NO. |
| <br>STROUD ENGINEERING, P.A.<br>107-B COMMERCE ST.<br>GREENVILLE, NC 27858<br>(919) 756-9352 | SURVEYED: N/A | APPROVED: HOB    |               |  |      |      |  |      |               |
|  | DRAWN: DTB    | DATE: 12-10-08   |               |  |      |      |  |      |               |
|  | CHECKED: HOB  | SCALE: 1" = 100' |               |  |      |      |  |      |               |



# City of Greenville, North Carolina

Meeting Date: 2/12/2009  
Time: 7:00 PM

**Title of Item:** Ordinance to annex Gateway West, Phase 1 containing 6.93 acres located at the southwest corner of the intersection of US Highway 264 and Old Stantonsburg Road

**Explanation:** ANNEXATION PROFILE

A. SCHEDULE

1. Advertising date: February 2, 2009
2. City Council public hearing date: February 12, 2009
3. Effective date: June 30, 2009

B. CHARACTERISTICS

1. Relation to Primary City Limits: Contiguous
2. Relation to Recognized Industrial Area: Outside
3. Acreage: 6.93 acres
4. Voting District: 1
5. Township: Arthur
6. Vision Area: F
7. Zoning District: CG(General Commercial)
8. Land Use: Existing: Vacant  
Anticipated: Approximately 61,000 square feet of heated commercial space

9. Population:

|  | Formula | Number of People |
|--|---------|------------------|
| Total Current                          | N/A     | N/A              |
| Estimated at full development          | N/A     | N/A              |
| Current Minority                       | N/A     | N/A              |
| Estimated Minority at full development | N/A     | N/A              |
| Current White                          | N/A     | N/A              |
| Estimated White at full development    | N/A     | N/A              |

- 10. Rural Fire Tax District: Red Oak
- 11. Greenville Fire District: Station #2 (Distance of 1.67 miles)
- 12. Present Tax Value: \$464,602  
Estimated Future Tax Value: \$7,174,602

**Fiscal Note:** The total estimated tax value at full development is \$7,174,602.

**Recommendation:** Approval of the ordinance to annex Gateway West, Phase 1.

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

- [Survey Map](#)
- [Annexation\\_Ordinance\\_Gateway\\_West\\_Ph1\\_806138](#)

ORDINANCE NO. 09-\_\_\_\_  
AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF  
THE CITY OF GREENVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Greenville has been petitioned under G.S. 160A-31, as amended, to annex the area described herein; and

WHEREAS, the City Council has directed the City Clerk to investigate the sufficiency of said petition; and

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall at 7:00 p.m. on the 12<sup>th</sup> day of February, 2009 after due notice by publication in The Daily Reflector on the 2nd day of February, 2009; and

WHEREAS, the City Council does hereby find as a fact that said petition meets the requirements of G. S. 160A-31, as amended.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section 1. That by virtue of the authority vested in the City Council of the City of Greenville, North Carolina, under G. S. 160A-31, as amended, the following described contiguous territory is annexed:

To Wit:    Being all of that certain property as shown on the annexation map entitled “Gateway West, Phase 1” involving 6.93 acres as prepared by Rivers & Associates, Inc.

Location:    Lying and being situated in Arthur Township, Pitt County, North Carolina, located at the southwest corner of the intersection of US Hwy. 264 and Old Stantonsburg Road. This annexation involves 6.93 acres.

GENERAL DESCRIPTION:

Being that certain tract of land located in Pitt County, North Carolina, bounded on the north by N.C.S.R. 1467 (aka Stantonsburg Road), on the east by RHD Property Management, LLC, on the south by West Point Subdivision, and the west by Gateway West, LLC, and being more particularly described as follows:

Beginning at the northeast corner of the Gateway West, LLC property recorded in Deed Book 2568, Page 623, said point being located at the intersection of southerly right of way of N.C.S.R. 1467 (aka Stantonsburg Road) and the westerly right of way of Stantonsburg Road (N.C.S.R. 1200); thence from the POINT OF BEGINNING and crossing the right of way of Stantonsburg Road (N.C.S.R. 1200) S 77°10'16" E 200.43 feet to the point of intersection of the easterly right of way of Stantonsburg Road (N.C.S.R. 1200) with the southerly right of way of N.C.S.R. 1467 (aka Stantonsburg Road); thence cornering and running with the easterly right of way of Stantonsburg Road (N.C.S.R. 1200) S 27°34'24" W 176.79 feet to a point, thence with a curve to the right, having a radius of 883.51 feet, arc length of 329.59 feet, and a chord bearing and distance of S 25°37'49" W 327.68 feet, thence with a curve to the left, having a radius of 60.00 feet, arc length of 85.05 feet and a chord bearing and distance of S 71°06'29" E 78.11 feet to a point in the southeasterly right of way of Stantonsburg Road (N.C.S.R. 1200), said point being located in the westerly line of West Point Subdivision, recorded in Map Book 58 Page 56; thence continuing with the southeasterly right of way of Stantonsburg Road (N.C.S.R. 1200) S 65°18'42" W 38.95 feet to a point, thence S 62°31'17" W 49.55 feet to a point, thence S 62°30'47" W 137.39 feet to a point, thence S 62°22'29" W 163.32 feet to a point, thence cornering and crossing Stantonsburg Road (N.C.S.R. 1200) right of way, N 27°37'31" W 79.59 feet to a point in the westerly right of way of Stantonsburg Road (N.C.S.R. 1200); thence leaving the right of way of Stantonsburg Road (N.C.S.R. 1200) and with a new annexation line across the Gateway West, LLC property recorded in Deed Book 2568, Page 623 N 37°35'29" W 217.76 feet to a point, thence N 35°52'20" E 209.52 feet to a point, thence N 54°07'40" W 43.97 feet to a point, thence with a curve to the left, having a radius of 175.00 feet, arc length of 27.81 feet and a chord bearing and distance of N 58°40'48" W 27.78 feet to a point, thence N 26°46'04" E 50.00 feet to a point, thence N 09°14'45" E 271.44 feet to a point in the southerly right of way of N.C.S.R. 1467 (aka Stantonsburg Road), having a right of way width of 320 feet; thence cornering and running with the southerly right of way of N.C.S.R. 1467 (aka Stantonsburg Road) along a curve to the right, having a radius of 7489.44 feet, arc length of 347.39 feet and a chord bearing and distance of S 79°16'00" E 347.36 feet to the place and POINT OF BEGINNING, containing 6.93 acres more or less and being a portion of the Gateway West, LLC property and right of way area located in Stantonsburg Road (N.C.S.R. 1200) as shown on an Annexation Map for Gateway West – Phase 1, Rivers and Associates, Inc.



Drawing Z-2472, dated December 15, 2008, which is incorporated herein by reference.

Section 2. Territory annexed to the City of Greenville by this ordinance shall, pursuant to the terms of G. S. 160A-23, be annexed into Greenville municipal election district one. The City Clerk, City Engineer, representatives of the Board of Elections and any other person having responsibility or charge of official maps or documents shall amend those maps or documents to reflect the annexation of this territory into municipal election district five.

Section 3. The territory annexed and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Greenville and shall be entitled to the same privileges and benefits as other territory now within the City of Greenville. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 4. The Mayor of the City of Greenville, North Carolina, shall cause a copy of the map of the territory annexed by this ordinance and a certified copy of this ordinance to be recorded in the office of the Register of Deeds of Pitt County and in the Office of the Secretary of State in Raleigh, North Carolina. Such a map shall also be delivered to the Pitt County Board of Elections as required by G.S. 163-288.1.

Section 5. This annexation shall take effect from and after the 30th day of June, 2009.

ADOPTED this 12<sup>th</sup> day of February, 2009.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Wanda T. Elks, City Clerk

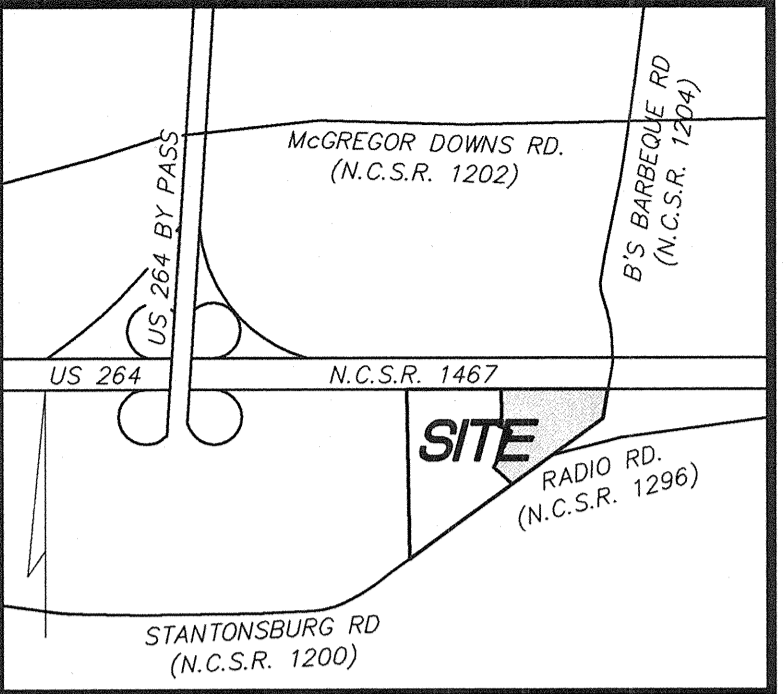
NORTH CAROLINA  
PITT COUNTY

I, Patricia A. Sugg, Notary Public for said County and State, certify that Wanda T. Elks personally came before me this day and acknowledged that she is City Clerk of the City of Greenville, a municipality, and that by authority duly given and as the act of the municipality, the foregoing instrument was signed in its name by its Mayor, sealed with the corporate seal, and attested by herself as its City Clerk.

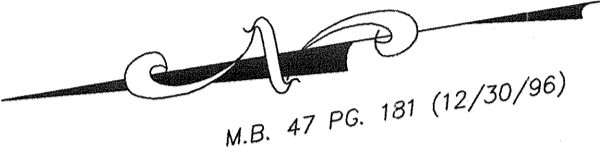
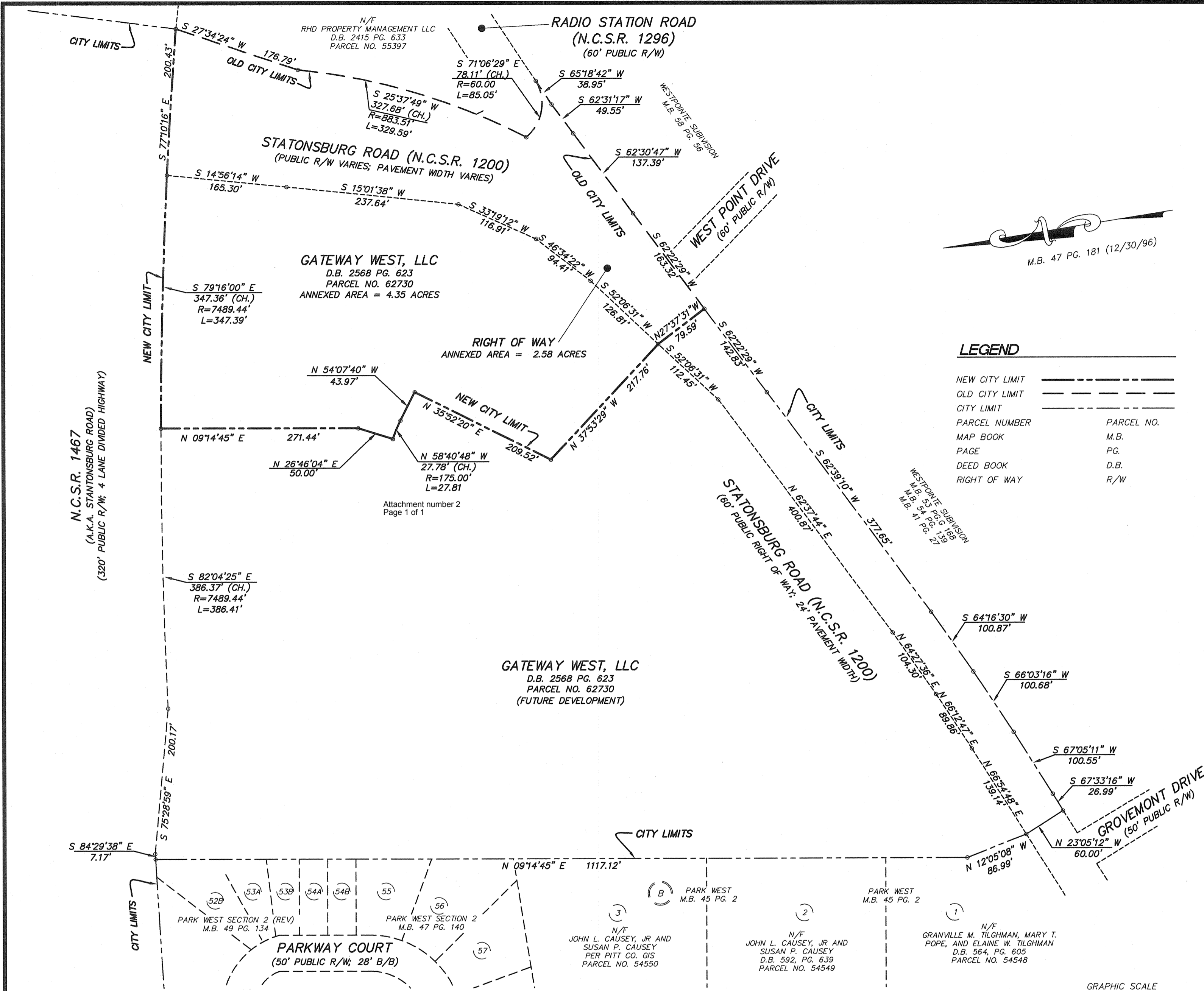
WITNESS my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Patricia A. Sugg, Notary Public

My Commission Expires: September 4, 2011



**Vicinity Map**  
1" = 1000'



**LEGEND**

|                |            |
|----------------|------------|
| NEW CITY LIMIT | ---        |
| OLD CITY LIMIT | ---        |
| CITY LIMIT     | ---        |
| PARCEL NUMBER  | PARCEL NO. |
| MAP BOOK       | M.B.       |
| PAGE           | PG.        |
| DEED BOOK      | D.B.       |
| RIGHT OF WAY   | R/W        |

- NOTES**
1. AREA DETERMINED BY COORDINATES.
  2. ALL DISTANCES ARE HORIZONTAL GROUND MEASUREMENTS.
  3. NO POINT SET AT ANY CORNER UNLESS OTHERWISE NOTED.
  4. THIS MAP WAS PREPARED FOR ANNEXATION PURPOSES ONLY AND IS NOT A BOUNDARY SURVEY OF THE PROPERTIES SHOWN HEREON.
  5. BOUNDARY INFORMATION FOR GATEWAY WEST IS BASED ON FIELD SURVEY. ALL OTHER INFORMATION TAKEN FROM ANNEXATION MAPS REFERENCED HEREON.

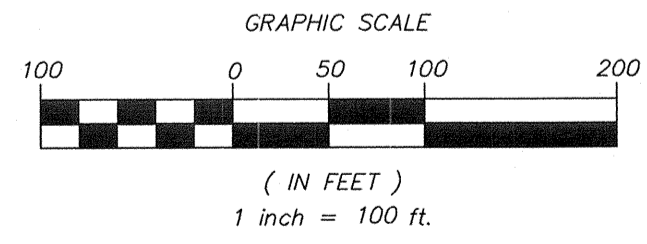
- REFERENCES**
- PARCEL NO. 062730
  - M.B. 46 PG. 93
  - M.B. 37 PG. 18
  - M.B. 43 PG. 85
  - D.B. 2568 PG. 623
  - D.B. 1539, PG. 448
  - M.B. 47 PG. 181
  - D.B. 0 52 PG. 81
  - STATE HIGHWAY BK. 1, PG. 31A, 31 F, 32 I
  - D.B. P 51 PG. 529
  - D.B. M 53, PG. 700
  - D.B. 280 PG. 764
  - D.B. W 25 PG. 359 (CANNOT DETERMINE LOCATION)
  - D.B. R 31 PG. 551 (CANNOT DETERMINE LOCATION)



**CERTIFICATION**  
NORTH CAROLINA      PITT COUNTY

I, PATRICK W. HARTMAN, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM INFORMATION REFERENCE HEREON, SUPPLEMENTED WITH FIELD SURVEYS; THAT THE RATIO OF PRECISION IS 1:10,000; THAT BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND AND REFERENCED HEREON; THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. I FURTHER CERTIFY PURSUANT TO G.S. 47-30 (1)(1)(d) AS TO THE FOLLOWING THAT THIS SURVEY IS OF ANOTHER CATEGORY (ANNEXATION MAP), SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER, AND SEAL THIS 15th DAY OF DECEMBER, 2008.

SIGNED: *Patrick W. Hartman*  
PROFESSIONAL LAND SURVEYOR  
REGISTRATION NUMBER L-4262



**ANNEXATION MAP**  
**GATEWAY WEST**  
**PHASE 1**  
ARTHUR TOWNSHIP, PITT COUNTY, NORTH CAROLINA

RECORDED IN MAP BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

|         |  |     |          |          |
|---------|--|-----|----------|----------|
| OWNER   | GATEWAY WEST, LLC  |     |          |          |
| ADDRESS | P.O. BOX 30930<br>GREENVILLE, NC 27833                           |     |          |          |
| PHONE   | (252) 355-7757   |     |          |          |
|         | SURVEYED   | WG  | APPROVED | DT       |
|         | DRAWN  | FWH | DATE     | 12/15/08 |
|         | CHECKED  | PH  | SCALE    | 1"=100'  |
|         | 107 East Second Street<br>Greenville, NC 27858<br>(252) 752-4135 |     |          |          |

| MAP NO. | PLATS RECORDED                             | BOOK | PAGE |
|---------|--|------|------|
|         | ANNEXATION MAP FOR PROPERTY OF R.R. MILLER | 46   | 93   |
|         | ANNEXATION MAP FOR WEST POINT SUBDIVISION  | 37   | 18   |
|         | ANNEXATION MAP FOR PARK WEST SUBDIVISION   | 43   | 85   |

MAP SHOWING AREA ANNEXED BY  
**THE CITY OF GREENVILLE, N.C.**

EFFECTIVE DATE \_\_\_\_\_ ORDINANCE NO. \_\_\_\_\_

AREA **6.93 ACRES**

ARTHUR TOWNSHIP, PITT COUNTY, N.C.



# City of Greenville, North Carolina

Meeting Date: 2/12/2009  
Time: 7:00 PM

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**Title of Item:** Department of Housing and Urban Development Proposed 2009-2010 Annual Action Plan

**Explanation:** As a requirement of HOME Investment Partnerships Program (HOME) and Community Development Block Grant (CDBG) funding, all participating jurisdictions must prepare and submit an Annual Action Plan detailing how funds will be spent and on what activities. The Housing Division is in the process of identifying activities for the upcoming 2009-2010 fiscal year in accordance with the City of Greenville Consolidated Plan, which covers fiscal years 2008-2013. An Annual Plan must be submitted for each year of the five-year Consolidated Plan.


The Annual Action Plan process requires two public hearings to give citizens an opportunity to participate and provide comments. The purpose of the first public hearing is to present a preliminary budget of activities, receive suggestions/comments on other eligible activities, and approve the completion schedule.

**Fiscal Note:** Federal funding will be contingent upon a budget appropriation by Congress to the U.S. Department of Housing and Urban Development. Due to the transition of a new presidential administration, the federal government has been instructed to operate off of the current federal budget until March 2009. Staff estimates that the CDBG funding will amount to \$807,000 and HOME funds will be \$760,000 for the 2009-10 fiscal year. These award amounts are subject to change pending the adoption of a federal budget.

**Recommendation:** Hold the first public hearing for citizen participation and approve the proposed Annual Action Plan completion schedule.

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**Attachments / click to download**

 [09\\_10\\_AA\\_Schedule\\_805142](#)

 [2009\\_10\\_Budget\\_805139](#)

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**2009-2010 ANUUAL ACTION PLAN**  
**PROPOSED COMPLETION SCHEDULE**

|                         |   |
|-------------------------|---|
| January 12, 2009        | Deadline for Submission of Sub recipient Applications for funding                         |
| February 6, 2009        | Notice of Public Hearing  |
| February 12, 2009       | First Public Hearing  |
| March 11, 2009          | Affordable Housing Loan Committee Review/Recommendation of Funding Nonprofits             |
| March 13, 2009          | Deadline for Submission of Community Housing Development Organization (CHDO) Applications |
| March 23, 2009          | Draft of Annual Action Plan/Staff review  |
| March 30-April 30, 2009 | Thirty (30) Day Public Comment Period   |
| April 8, 2009           | Affordable Housing Loan Committee Review of Draft Annual Action Plan                      |
| May 4, 2009             | Notice of Public Hearing  |
| May 14, 2009            | Second and Final Public Hearing   |
| May 14, 2009            | City Council Adoption/Resolution  |
| May 15, 2009            | Submission to U.S. Dept. of H.U.D.  |

**Proposed Uses of Federal & Local Funds in FY 2009**

(Leveraging Of Funds)

| Program / Activity                | CDBG Funds       | HOME Funds       | Other Federal | Housing Bonds    | Local Funds      | Total              | Proposed Units |
|-----------------------------------|------------------|------------------|---------------|------------------|------------------|--------------------|----------------|
| <b>HOUSING</b>                    |                  |                  |               |                  |                  |                    |                |
| <b>AFFORDABLE HOUSING</b>         |                  |                  |               |                  |                  |                    |                |
| Downpayment Assistance            | \$0              | \$122,500        | \$0           | \$0              | \$30,000         |                    | 5              |
| Housing Rehabilitation            | \$150,000        | \$120,000        | \$0           | \$100,000        | \$0              |                    | 6              |
| New Construction                  | \$0              | \$320,000        | \$0           | \$270,000        | \$0              |                    | 3              |
| <b>Sub-Total</b>                  | <b>\$150,000</b> | <b>\$562,500</b> | <b>\$0</b>    | <b>\$370,000</b> | <b>\$30,000</b>  | <b>\$1,112,500</b> | <b>14</b>      |
| <b>ADMINISTRATION</b>             |                  |                  |               |                  |                  |                    |                |
| City of Greenville                | \$157,000        | \$75,000         | \$0           | \$0              | \$300,000        |                    | 8              |
| <b>Sub-Total</b>                  | <b>\$157,000</b> | <b>\$75,000</b>  | <b>\$0</b>    | <b>\$0</b>       | <b>\$300,000</b> | <b>\$532,000</b>   | <b>8</b>       |
| <b>CHDO</b>                       |                  |                  |               |                  |                  |                    |                |
|                                   |                  | \$112,500        | \$0           | \$0              | \$0              |                    | 1              |
| <b>Sub-Total</b>                  | <b>\$0</b>       | <b>\$112,500</b> | <b>\$0</b>    | <b>\$0</b>       | <b>\$0</b>       | <b>\$112,500</b>   | <b>1</b>       |
| <b>PUBLIC SERVICE</b>             |                  |                  |               |                  |                  |                    |                |
| Housing Counseling                | \$25,000         | \$0              | \$0           | \$0              | \$0              |                    | 35             |
| Job Training                      | \$25,000         | \$0              | \$0           | \$0              | \$0              |                    | 25 jobs        |
| Counseling & Outreach             | \$15,000         | \$0              | \$0           | \$0              | \$0              |                    | 15             |
| Homeless-10 year Plan             | \$30,000         | \$0              | \$0           | \$0              | \$0              |                    | 1 job          |
| Youth Development                 | \$10,000         | \$0              | \$0           | \$0              | \$0              |                    |                |
| Contingency                       | \$10,000         | \$0              | \$0           | \$0              | \$0              |                    |                |
| <b>Sub-Total</b>                  | <b>\$115,000</b> | <b>\$0</b>       | <b>\$0</b>    | <b>\$0</b>       | <b>\$0</b>       | <b>\$115,000</b>   | <b>50</b>      |
| <b>REVITALIZATION</b>             |                  |                  |               |                  |                  |                    |                |
| Acquisition                       | \$50,000         | \$0              | \$0           | \$0              | \$0              |                    | 4              |
| Clearance/Demolition              | \$30,000         | \$0              | \$0           | \$30,000         | \$0              |                    | 8              |
| Relocation                        | \$10,000         | \$0              | \$0           | \$30,000         | \$0              |                    | 4              |
| Public Facility Improvements      | \$50,000         | \$0              | \$0           | \$0              | \$0              |                    | 3              |
| <b>Sub-Total</b>                  | <b>\$140,000</b> | <b>\$0</b>       | <b>\$0</b>    | <b>\$60,000</b>  | <b>\$0</b>       | <b>\$200,000</b>   | <b>19</b>      |
| <b>Total</b>                      | <b>\$562,000</b> | <b>\$750,000</b> | <b>\$0</b>    | <b>\$430,000</b> | <b>\$330,000</b> | <b>\$2,072,000</b> | <b>92</b>      |
| <b>ECONOMIC DEVELOPMENT</b>       |                  |                  |               |                  |                  |                    |                |
| Infrastructure Improvement        | \$35,000         | \$0              | \$0           | \$0              | \$0              |                    | 5 jobs         |
| Business Incubator                | \$200,000        | \$0              | \$0           | \$0              | \$0              |                    | 25 jobs        |
| <b>Economic Development Total</b> | <b>\$235,000</b> | <b>\$0</b>       | <b>\$0</b>    | <b>\$0</b>       | <b>\$0</b>       | <b>\$235,000</b>   | <b>0</b>       |
| <b>PROGRAM INCOME</b>             |                  |                  |               |                  |                  |                    |                |
| Housing Rehab                     | \$10,000         | \$0              | \$0           | \$0              | \$0              |                    | 1              |
| Downpayment Assistance            | \$0              | \$10,000         | \$0           | \$0              | \$0              |                    | 1              |
| <b>Program Income Total</b>       | <b>\$10,000</b>  | <b>\$10,000</b>  | <b>\$0</b>    | <b>\$0</b>       | <b>\$0</b>       | <b>\$20,000</b>    | <b>2</b>       |
| <b>PROGRAM DELIVERY</b>           |                  |                  |               |                  |                  |                    |                |
| <b>Program Delivery Total</b>     | <b>\$0</b>       | <b>\$0</b>       | <b>\$0</b>    | <b>\$0</b>       | <b>\$0</b>       | <b>\$0</b>         | <b>0</b>       |
| <b>GRAND TOTALS</b>               |                  |                  |               |                  |                  |                    |                |
| <b>GRAND TOTALS</b>               | <b>\$807,000</b> | <b>\$760,000</b> | <b>\$0</b>    | <b>\$430,000</b> | <b>\$330,000</b> | <b>\$2,327,000</b> | <b>94</b>      |



# City of Greenville, North Carolina

Meeting Date: 2/12/2009  
Time: 7:00 PM

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**Title of Item:** Resolutions establishing State Legislative Initiatives

**Explanation:** Based upon the direction of City Council at its February 9, 2009, meeting, resolutions which establish the City's legislative initiatives for the 2009 Session of the North Carolina General Assembly will be prepared for City Council's consideration.

**Fiscal Note:** The development of the Legislative Initiatives will not have a fiscal impact.

**Recommendation:** Approval of the resolutions which establish the City's legislative initiatives.

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