

Ordinance to Amend the Durham City Code to Remove Criminal Penalties from Certain Sections, and to Reinforce That Criminal Penalties May Be Applied to Certain Other Sections, as Required by N.C.G.S. §160A-175 (Session Law 2021-138)

Whereas, N.C.G.S. §160A-175 and N.C.G.S. §14-4 have, for decades, provided that violations of local ordinances constituted a misdemeanor or an infraction unless the Code provided otherwise;

Whereas, effective December 1, 2021, Part XIII of Senate Bill 300 (Session 2021-138) amended G.S. §160A-175 by adding a new subsection (b1) which prohibits certain categories of ordinances from imposing a criminal penalty;

Whereas, amendments to subsection (b) of N.C.G.S. §160A-175 further provide that, except for the aforementioned categories, ordinances may continue to be enforceable as a misdemeanor or infraction only if the ordinance specifies that it is a misdemeanor or infraction, thereby allowing criminal penalties if the Code so specifies but removing them as a default;

Whereas, amendments to the Durham City Code are necessary to remove criminal penalties from those types of ordinances in which they are no longer allowed, and to otherwise maintain existing misdemeanor and infraction enforcement options, in accordance with recently revised N.C.G.S. §160A-175.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DURHAM ORDAINS THAT:

Section 1. City Code Section 1-5 shall be amended to add the underlined language where noted below:

“Sec. 1-5. Altering Code.

It shall be unlawful for any person to change or amend, by additions or deletions, any part or portion of this Code or to insert or delete pages, or any portions thereof, or to alter or tamper with such Code in any manner whatsoever, except pursuant to ordinance or resolution or other official act of the city council, which will cause the law of the municipality to be misrepresented thereby.

In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 2. City Code Section 1-9 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 1-9. General penalties; misdemeanor penalty; civil penalties for parking violations; vehicle operation violations; continuing violations; alternative remedies.

(a) *Misdemeanor penalty.* ~~Except as provided in subsection (b) of this section, where no specific criminal penalty is provided therefor, w~~Whenever in any ordinance, any act is prohibited, or made or declared to be unlawful or a misdemeanor, or the doing of any act is required or the failure to do any act is made or declared to be prohibited, unlawful or a misdemeanor, each separate violation of such provision shall be a Class 3 misdemeanor, for which the maximum fine shall be \$50.00 unless the ordinance expressly states that the

maximum fine is greater than \$50.00, and for which the maximum imprisonment shall be 30 days. No fine shall exceed \$500.00. Unless provided otherwise, limits on criminal fines do not imply limits on noncriminal or other criminal remedies.

(b) *Civil penalties for parking violations.*

- (1) Whenever in any ordinance, any act of vehicle parking is prohibited or is made or declared unlawful, or the doing of any act of vehicle parking is required, or the failure to do any act of vehicle parking is declared to be unlawful, the violation of such provision shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender, or the registered owner of the vehicle, does not pay the penalty within ten days of the violation. The violations shall not be deemed criminal and no criminal penalty shall be imposed therefor.
- (2) Whenever in any ordinance, any act of vehicle parking is prohibited or made or declared to be unlawful, or the doing of any act of vehicle parking is required, or the failure to do any act of vehicle parking is prohibited or declared to be unlawful, whether the violation occurs on a street, or on a public vehicular area as defined in G.S. 20-4.01(32), or on any land or in any building owned by or leased to the city, or where the city operates a parking facility, it shall be prima facie evidence in any court that such vehicle was parked and operated at the time of the violation by the person in whose name such vehicle is then registered and licensed according to the records of the North Carolina Division of Motor Vehicles, or similar agency of any other state for vehicles not registered or licensed in this state, and such person in whose name such vehicle is then registered shall be subject to the same civil penalty provided by the applicable ordinance, to be recovered by the city in a civil action in the nature of debt if the civil penalty is not paid within ten days of such violation. The violations shall not be deemed criminal and no criminal penalty shall be imposed therefor.
- (3) In addition to the above penalties, the city manager may immobilize by the use of wheel locks and tow and impound any vehicle which is illegally parked in violation of chapter 66, article IV, and charge a vehicle immobilization fee, as a civil penalty, of \$50.00, to be recovered by the city in a civil action in the nature of debt if the fee is not paid within ten days of the attachment of the wheel lock to the vehicle.
- (4) Violations for which civil penalties may be imposed pursuant to this section 1-9(b) are not criminal, and no criminal penalty shall be imposed therefor.

(c) *Infractions for vehicle operation violations.* Whenever in any ordinance, any act of vehicle operation (except parking) is prohibited, or is made or declared to be an infraction unlawful, or whenever in any ordinance, the doing of any act of vehicle operation (except parking) is required or the failure to do any act of vehicle operation (except parking) is prohibited or made or declared to be an infraction, unlawful, the violation of such provision shall constitute an infraction, and the person found responsible for such infraction shall pay a penalty not to exceed \$50.00, which shall be recovered as provided by law for the violation of infractions.

(d) *Continuing offenses.* Except as otherwise provided, each day's continuing violation of any ordinance shall be a separate and distinct offense for purposes of all remedies, including civil and criminal.

(e) *Enforcement alternatives.* Except as otherwise provided, violation of any ordinance may be enforced by one, all, or any combination of the remedies authorized.

(f) *Penalty not excuse.* The imposition or payment of a penalty, fine, or punishment shall not be construed to excuse any violation of any ordinance.

(g) ~~{Late payment charges.}~~ The city council has found that it is in the public interest to impose late payment charges on certain civil penalties because late payment charges may help ensure that the penalties are paid on time. The date of delinquency shall be the date described by the ordinance, resolution, or other legal authority establishing when the civil penalty is delinquent or past due. If an ordinance, resolution or other legal authority does not establish the date of delinquency, then the civil penalty shall be delinquent 60 days after it is payable. A rate of interest of eight percent simple interest per year shall be imposed on the following civil penalties from the date they become delinquent: all civil penalties, denominated as such, provided for by division 2 of article III of chapter 46 (fire prevention code); and article IV of chapter 46 (police and fire alarm systems).

Section 3. City Code Section 6-2 shall be amended to add the underlined language where noted below:

“Sec. 6-2. Bird sanctuary.

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

(b) *Trapping, shooting birds or wildfowl.* It shall be unlawful to trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wildfowl or to rob bird nests or wildfowl nests; provided, however, that if starlings, pigeons, or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or deface property, in the opinion of the director of public safety, and no satisfactory alternative is found to abate such nuisance, such birds may be destroyed in such numbers and in such manner as is deemed advisable by the director of public safety.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 4. City Code Section 6-3 shall be amended to add the underlined language where noted below:

“Sec. 6-3. Shooting or poisoning wild game or squirrels, and deer bow hunting.

(a) It shall be unlawful for any person to shoot any wild game or any squirrel, whether wild or tame, with a gun or firearm or to willfully poison any wild game or squirrel.

However, deer hunting by bow and arrow or crossbow ("collectively archery"), as defined by the state wildlife resources commission, is permitted on private property during the Central North Carolina deer archery season as established by the state wildlife resources commission. A person may engage in deer archery on his or her own property if he or she has on his or her person a valid state hunting license (or qualifies for an exemption from licensing by the state wildlife resources commission), or on the property of another in their absence if he or she has on his or her person both a valid state hunting license (or qualifies for an exemption from licensing by the state wildlife resources commission) and written permission from the property owner or the property owner's authorized agent or manager. Parcels or tracts of land that are either owned by a person engaged in deer archery or for which that person has been given written permission to hunt shall be referred to as "areas of consent". Deer archery may only occur within areas of consent when the following requirements are met:

- (1) Deer archery must be conducted from a permanent or portable elevated platform of at least ten feet above the ground; and
- (2) Areas of consent must be greater than five acres in area and may be comprised of contiguous parcels or tracts; and
- (3) No arrow shall be discharged within 250 feet of any residential dwelling, school, church, commercial building, governmental property, occupied structure, street, park, or other recreational area, nor shall any arrow be discharged within 250 feet of the perimeter of the area of consent; and
- (4) Hunters shall make every reasonable effort to track wounded deer for the purpose of completing the harvest and recovering the carcass; and
- (5) There is a valid hunting season in effect for which the hunting license applies at the time the bow or crossbow is discharged; and
- (6) The hunter adheres to all applicable state and local regulations; and
- (7) The person discharging the bow or crossbow exercises reasonable regard for the safety and property of other persons.

(b) On a biennial basis the city manager shall make a report to city council regarding deer archery within the city. This report shall include available information on the number of deer harvested, any impact on the number of deer interference incidents, and any safety issues that may arise.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 5. City Code Section 6-5 shall be amended to add the underlined language where noted below:

"Sec. 6-5. Livestock on sidewalk.

It shall be unlawful for any person to permit or allow any horse, mule, cow or other livestock to walk or travel on any of the sidewalks of the city. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 6. City Code Section 10-48 shall be amended to add the underlined language where noted below:

"Sec. 10-48. Permits for construction, plumbing, electrical, and mechanical work.

In order to construct, enlarge, alter, repair, move, demolish, or change the occupancy of, a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical, or plumbing system, when such work is regulated by the North Carolina Building Code, as such code may be amended from time to time, an owner or authorized agent shall first make application to the Durham Inspections Department and obtain the required permit. Such permit shall not be required if the North Carolina Building Code specifically excuses obtaining a permit for such work. (See e.g., G.S. 160A-117 regarding exemptions for certain specified work on single family residences or farm buildings that costs \$5,000.00 or less.) Provisions under the North Carolina Building Code that allow local governments to permissively exempt categories of work from permit requirements shall not be

deemed to exempt such work unless this chapter clearly grants an exemption. This section regarding permit requirements shall supersede any conflicting provisions contained within this chapter. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 7. City Code Section 10-49 shall be amended to add the underlined language where noted below:

"Sec. 10-49. Notification of utilities; safety provisions; notice of completion of work.

Every person who obtains a permit under section 10-48 to demolish a building or structure shall notify all utility companies which furnish utility service to the property to discontinue such service. Every such person shall place or cause to be placed on such property a barricade for safety and protection of the public when so ordered by the building inspector. Every such person shall clear the property of all debris and shall leave the property in such a manner that water will not stand thereon. Every such person shall notify the building inspector when the demolition work is complete, and such work shall be subject to the final inspection and approval of the building inspector. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 8. City Code Section 10-87 shall be amended to add the underlined language where noted below:

"Sec. 10-87. Industries and institutions renting out property—Installation, etc., of wiring, etc.

All work of installing, altering, repairing and maintaining wiring devices, appliances, and equipment on premises of an industry or institution which are held for rental purposes shall conform to all the rules of this article. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 9. City Code Section 10-88 shall be amended to add the underlined language where noted below:

"Sec. 10-88. Same—Permits, fees, etc.

In connection with the work referred to in section 10-87, a permit shall be secured for each such job and fees shall be paid for inspection according to the fee schedule of this chapter and calls for inspection of each installation, alteration or repair made on such rental property. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 10. City Code Section 10-107 shall be amended to add the underlined language where noted below:

"Sec. 10-107. Permit required generally.

Except as otherwise provided, no electric wiring, devices, appliances or equipment shall be installed within or on any building, structure or premises, nor shall any alteration be made in any

such existing wiring, devices, appliances or equipment unless a permit therefor shall first have been secured from the director of inspection services. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 11. City Code Section 10-119 shall be amended to add the underlined language where noted below:

"Sec. 10-119. Inspection prior to concealment of work.

During the course of construction when any part of the electrical installation is to be hidden from view by permanent placement of parts of the building, the person installing the wiring shall notify the director and such parts of the wiring installation shall not be concealed until they have been inspected and approved by the director of inspection services. On large installations, where concealment of parts of the wiring proceeds continuously, the person installing the wiring shall give the electrical inspector due notice and inspection shall be made periodically as the work progresses. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 12. City Code Section 10-122 shall be amended to add the underlined language where noted below:

"Sec. 10-122. Approval of wiring upon reconnection of commercial and industrial type occupancies.

In all commercial and industrial type occupancies which have been vacated and to which electric service has been discontinued, the electric service shall not be reconnected until the wiring has been approved by the director. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 13. City Code Section 10-143 shall be amended to add the underlined language where noted below:

"Sec. 10-143. Installation of electrical wiring and appliances in existing residence buildings.

In existing residence buildings, no person shall install electric wiring or appliances which will contribute to family occupancy number in excess of the restriction for that particular zone under the UDO. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 14. City Code Section 10-144 shall be amended to add the underlined language where noted below:

"Sec. 10-144. Wires over streets and sidewalks.

No person shall install wires or cables above the city's streets or sidewalks unless such person has a franchise for the purpose or has first secured a permit from the city council. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 15. City Code Section 10-172 shall be amended to add the underlined language where noted below:

“Sec. 10-172. Permit.

(a) *Required for installations, etc.* No person shall begin the installation or major repair of any boiler, warm-air heating, fired or unfired vessel unless he or she shall first have obtained a permit therefor from the director in accordance with the provisions of this article.

(b) *Application.* Any person desiring a permit, as required in this article, shall file an application therefor with the director.

(c) *Conditions.* All permits, as required in this article, shall be given upon condition that the director may at any time revoke and annul the permit when the work being done pursuant thereto is not being properly executed and upon the further condition that the parties interested shall not have any claim for damages in consequence of such permit's being revoked or annulled.

(d) *Available Remedies.* In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 16. City Code Section 10-239 shall be amended to delete the stricken through language where noted below:

“Sec. 10-239. Enforcement.

(a) *Duties of administrator.* It shall be the duty of the administrator:

- (1) To investigate the dwelling conditions, and to inspect dwellings, dwelling units, and rooming units located in the city, in order to determine which of the same are unfit for human habitation, and for the purpose of carrying out the objectives of this article with respect to such dwellings, dwelling units and rooming units;
- (2) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated;
- (3) To keep a record of the results of inspections made under this article and an inventory of those dwellings that do not meet the minimum standards of fitness herein prescribed; and
- (4) To perform such other duties as may be herein prescribed.

(b) *Powers of administrator.* The administrator is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted.

- (1) To investigate the dwelling conditions in the city in order to determine which dwellings herein are unfit for human habitation;
- (2) To administer oaths and affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examinations and inspections; provided, such entries shall be made in such a manner as to cause the least possible inconvenience to the person in possession;

- (4) To appoint and fix the duties of such officers, agents, and employees as he or she deems necessary to carry out the purposes of this article; and
- (5) To delegate any of his or her functions and powers under this article to other officers and other agents.

(c) *Inspections; duty of owner and occupants.* For the purpose of making inspections, the administrator is hereby authorized to enter, examine and survey at all reasonable times, all dwellings, dwelling units and rooming units and premises as defined in this article. The owner, occupant or other person in charge of any dwelling, dwelling unit or rooming unit shall, upon being presented with proper credentials, give the administrator free access to such dwelling, dwelling unit or rooming unit and its premises at all reasonable times for the purpose of such inspection, examination and survey. If the owner or occupant refuses admission for this purpose, admission may be obtained through the provisions of G.S. 15-27.2 et seq.

(d) *Emergency repairs.* Upon a showing that a condition in a dwelling or dwelling unit poses an immediate threat of danger or harm to the safety of the occupants in such dwelling or dwelling unit, the housing appeals board shall adopt an ordinance ordering the administrator to repair such condition. The owner of and parties in interest in such dwelling or dwelling unit shall be given at least 72 hours' notice prior to the making of any repairs or improvements by the administrator. The amount of the cost of such repairs, alterations or improvements shall be a lien against the real property upon which such cost was incurred, which lien shall be filed, have the same priority and shall be collected as provided by G.S. 160A-216 et seq.

(e) *Preliminary investigation; notice, hearing.*

- (1) Whenever a petition is filed with the administrator by a public authority or by at least five residents of the city charging that any dwelling, dwelling unit or rooming unit is unfit for human habitation, or whenever it appears to the administrator, upon inspection, that any such place is unfit for human habitation he or she shall, if his or her preliminary investigation disclosed a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling, dwelling unit or rooming unit a complaint stating the charges and containing a notice that a hearing will be held before the administrator at a place therein fixed, not less than ten nor more than 30 days after the serving of such complaint.
- (2) It shall be unlawful for the owner or the agent of any owner upon whom such complaint has been served to permit any person to occupy any such dwelling, dwelling unit or rooming unit which, at the time of service of such complaint is vacant, or which shall subsequently become vacant, until such owner or the agent of such owner shall have obtained from the administrator a housing certificate. The administrator shall issue such housing certificate upon a determination that the dwelling unit complies in all respects with the provisions of this article.
- (3) The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint.
- (4) Notice of such hearing shall also be given to at least one of the persons signing a petition relating to such dwelling. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard.
- (5) The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the administrator.

(f) *Service of complaints and orders.* Complaints or orders issued by the administrator shall be served upon persons either personally or by registered mail or certified mail and, in addition thereto, may be served by regular mail. When service is made by registered or certified mail and, in addition thereto, regular mail and the registered mail or certified mail is unclaimed but the regular mail is not returned by the post office within ten days after mailing, service shall be deemed sufficient under this section and the general statutes. If the whereabouts of persons is unknown and cannot be ascertained by the administrator in the exercise of reasonable diligence, the administrator shall make an affidavit to that effect, and then the serving of such complaint or order upon the unknown owner or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this article. When service is made by publication, a notice of the pending proceeding shall be posted in a conspicuous place on the premises thereby affected.

(g) *Authorized agent.* Each owner of rental property located within the city shall authorize a person residing either in the city or the surrounding counties of Durham, Wake, Orange, Person, Granville or Chatham to serve as his or her agent for the purpose of accepting service of process under this section. The owner shall provide written notification to the Department of Neighborhood Improvement Services ("NIS"), the authorized agent's name, address, and phone number. The owner shall notify NIS of any changes in the information provided not less than ten days after such changes have occurred. Nothing in this section shall be interpreted to require an owner to designate an agent to accept service of process where the owner of the rental property resides within the city or one of the surrounding counties referenced herein. The initial failure of an owner to authorize an agent, as required in this section, will not result in the imposing of a civil penalty as authorized in this article; however, a penalty will be imposed if an owner still fails to authorize an agent after being notified by the administrator that such a designation is required under this article.

(h) *Notice of lis pendens (notice of pending housing code complaint or order binding on successors and assigns of owner).* Any complaint and notice or order issued pursuant to this article may be filed in the notice of lis pendens, with a copy of the complaint and notice or order attached thereto, in the office of the clerk of superior court of the county. The notice of lis pendens and a copy of the complaint and notice or order shall be indexed and cross-indexed in accordance with the indexing procedures of G.S. 1-117. From the date and time of indexing, the complaint and notice or order shall be binding upon the successors and assigns of the owners of and parties in interest in the building or dwelling. A copy of the notice of lis pendens shall be served upon the owners and parties in interest in the building or dwelling at the time of filing in accordance with G.S. 106D-1206. The clerk may cancel the notice of lis pendens upon a showing by the administrator that the action in which the complaint and notice or order was issued has been settled, discontinued, or abated.

(i) *Findings of facts; issuance of order to repair, demolish, etc.* If, after such notice and hearing as provided for in subsection (e), the administrator determines that the housing under consideration is unfit for human habitation under the terms of this article, he or she shall state in writing his or her findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order:

- (1) If the repair, alteration or improvement of such house can be made at a cost not to exceed 50 percent of the value of the house, the order shall require the owner, within the time specified in the order, to repair, alter or improve such house to render it fit for human habitation. The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs,

alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities.

- (2) If the repair, alteration or improvement of such housing cannot be made at a cost not to exceed 50 percent of the value of the housing, the order shall require the owner, within the time specified in the order to repair, alter or improve such housing to render it fit for human habitation or to demolish and remove such housing. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the historic district commission determines, after a public hearing, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160D-949.

(j) *Failure to comply with order.*

- (1) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, dwelling unit or rooming unit, the administrator may cause such dwelling, dwelling unit or rooming unit to be repaired, altered or improved or to be vacated and closed; and the administrator may cause to be posted on the main entrance of any dwelling, dwelling unit or rooming unit so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." ~~Occupation of a building so posted shall constitute a misdemeanor.~~
- (2) If the owner fails to comply with an order to remove or demolish the dwelling, the administrator may cause such dwelling to be removed or demolished; provided, however, that the duties of the administrator as set forth in this subsection and subsection (j)(1) of this section shall not be exercised until the housing appeals board shall have by ordinance ordered the administrator to proceed to effectuate the purpose of this section with respect to the particular property which the administrator shall have found to be unfit for human habitation and which property shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. Such ordinance shall be recorded in the office of the register of deeds of the county and shall be indexed in the name of the property owner in the grantor index.
- (3) If the housing appeals board has adopted an ordinance as provided in subsection (2) of this section authorizing vacating and closing of the dwelling, or if the administrator shall have commenced proceedings under this article requiring a dwelling to be repaired or vacated and closed, and if the dwelling has been vacated and closed for a period of six months pursuant to the ordinance or after such proceedings have commenced, then if the housing appeals board shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the city in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this state, then in such circumstances the housing appeals board

may, after the expiration of such six-month period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding 50 percent of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
- b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding 50 percent of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the administrator shall effectuate the purpose of the ordinance.

(k) Costs of lien on premises.

- (1) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the administrator shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as provided by G.S. 160A-216 et seq.
- (2) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the administrator shall be a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this subsection is inferior to all prior liens and shall be collected as a money judgment.
- (3) If the dwelling is removed or demolished by the administrator, he or she shall sell the materials of the dwelling and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the administrator, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(l) *Placarding.* After the failure of an owner of a dwelling, dwelling unit or rooming unit to comply with an order of the administrator issued pursuant to this article and upon adoption by the housing appeals board of an ordinance authorizing and directing him or her to do so, as provided by G.S. 160D-1203 and this article, the administrator shall proceed to cause such dwelling, dwelling unit or rooming unit to be repaired, altered or improved to comply with the minimum standards of fitness established by this article, or to be vacated and closed, or removed or demolished, as directed by the ordinance of the housing appeals board, and shall cause to be posted on the main entrance of such place of habitation a placard with the following words: "This building is unfit for human habitation, the use or occupation of this building for human habitation is prohibited and unlawful. ~~The occupation of a building so posted shall constitute a misdemeanor.~~"

(m) *Cancellation or reduction of demolition and other remediation liens in limited circumstances.*

- (1) The city manager may authorize the reduction or cancellation of the amount of the cost of repairs, alterations, or improvements; vacating and closing; securing, or removal or demolition, or other remediation by the administrator which is a lien against the real property upon which the cost was incurred as provided for in this article, or other appropriate provisions of law, in the following circumstances:
 - a. When the owner of the property completes construction of a dwelling on the property to be used for affordable housing. The owner must also obtain and provide a certificate of compliance from the city/county inspections department.
 - b. When the owner of the property conveys the property subject to the lien to a person who completes construction of a dwelling on the property to be used for affordable housing. Completion of construction shall be evidenced by a certificate of compliance issued by the city/county inspections department.
- (2) The city council may, in its discretion, reduce or cancel the cost described in this subsection, when the cost is past due, the owner offers to convey the property to the city and the city council agrees to accept the deed to the property in payment of the cost.
- (3) The city manager shall establish a policy to implement this subsection. The policy shall define "affordable housing," and contain criteria for which owners may apply for the reduction or cancellation of a lien under this subsection. The policy shall include other provisions designed to effectuate the purposes of this subsection. Such other provisions may include time limits for completion of construction of the dwelling, descriptions of covenants to be incorporated in the title to property conveyed to ensure it will be used for affordable housing; and requirements that a lien be in effect for a specified period of time before the manager will consider reducing or canceling a lien under this subsection. For each instance of exercising the authority to reduce or cancel a lien under this subsection, the city manager shall make a record of the reasons why such action is appropriate.
- (4) This subsection also applies to liens arising from the enforcement of the state unsafe building law (G.S. 160D-1119 et seq.), nonresidential building code, and abatement of public health nuisances (G.S. § 160A-193).
- (5) In this subsection (m), references to "this subsection" mean "this subsection (m)".

(n) *Notice to affordable housing agencies.* Whenever a determination is made pursuant to subsection (i) of this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this article, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the administrator, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The city clerk shall certify the mail of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order required the administrator to wait 45 days before causing removal or demolition.

(o) *Alternative remedies.* Neither this article nor any of its provisions shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their abatement by summary action or otherwise, and the enforcement of any remedy provided

herein shall not prevent the enforcement of any other remedies provided herein or in other ordinances or laws.

(p) *Conflict with other provisions.* In the event any provision, standard or requirement of this section is found to be in conflict with any other applicable law, code or ordinance pertaining to housing, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the city shall prevail.

Section 17. City Code Section 10-241 shall be amended to delete the stricken through language where noted below:

Sec. 10-241. Violations; penalty; fees.

(a) Offenses.

- (1) It shall be unlawful for the owner of any dwelling, dwelling unit or rooming unit to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close or remove or demolish the same, upon order of the administrator duly made and served as herein provided, within the time specified in such order, and each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense.
- (2) It shall be unlawful for the owner or agent of the owner in charge of such dwelling, dwelling unit or rooming unit with respect to which an order has been issued pursuant to this article, to occupy or permit the occupancy of the same in a dilapidated or deteriorated condition found to be unfit for human habitation in violation of such order for its repair, alteration or improvement or its vacation, closing or demolition, and each day that such unlawful occupancy continues after the expiration of the time prescribed in the order to repair, alter, improve, vacate, close or demolish such dwelling, dwelling unit or rooming unit shall constitute a separate and distinct offense.
- ~~(3) The violation of any provision of this article shall constitute a misdemeanor and shall be punishable in accordance with section 1-9. The maximum fine shall be \$500.00, and the maximum term of imprisonment shall be 30 days.~~

(b) Civil penalties.

- (1) Any owner of a dwelling or dwelling unit, except an owner who occupies the dwelling as his or her principal place of residence, who fails to comply with any of the provisions of this article shall be subject to a civil penalty.
 - a. The initial civil penalty shall be \$300.00 and an additional civil penalty of \$300.00 shall be imposed each month. The penalty shall be imposed until the dwelling or dwelling unit is brought into compliance. However, the maximum cumulative civil penalty shall not exceed \$5,000.00. This penalty may be recovered by the city in a civil action in the nature of debt if the owner does not pay the same within 30 days after the initial day of noncompliance.
 - b. The administrator shall formulate written guidelines to use in assessing and calculating civil penalties. Such written guidelines shall authorize the city manager to discharge certain penalties deemed uncollectible by the finance department director after good faith efforts have been made to collect such penalties.

- c. An owner may request, in writing to the administrator, reduction or cancellation of a civil penalty imposed pursuant to this subsection (subsection (b)(1)). The city manager or his/her designee may authorize the reduction or cancellation of a civil penalty. The city manager or his/her designee shall formulate written guidelines to use in determining any reduction in civil penalties.
- (2) The city manager may agree, in writing only, to release, in whole or in part, a subsequent owner from liability for a civil penalty imposed pursuant to subsection (b)(1) of this section under the following circumstances:
 - a. The previous owner incurred a civil penalty due to failure to comply with the administrator's order to bring the house into compliance;
 - b. When the subsequent owner acquired the same house, it was still not in compliance with the administrator's order, and a civil penalty was assessed against the subsequent owner as provided in subsection(b)(1); and
 - c. The subsequent owner agrees to bring the house into compliance within an agreed upon timeframe.

However, if the subsequent owner fails to comply with the agreement, then the civil penalty shall remain and be computed from the date that the subsequent owner acquired the house.

(c) Fees.

- (1) The owner of any dwelling, dwelling unit or rooming unit who fails to repair or vacate and close it, or demolish or remove it, upon order of the administrator duly made and served as herein provided, within the time specified in such order, shall be subject to an administrative fee set by the city council for noncompliance. This fee allows the city to recover some of its administrative costs incurred due to the owner's failure to comply with the administrator's order described herein.
- (2) Any owner of a dwelling or dwelling unit, except an owner who uses the dwelling as his or her principal place of residence, who requests a re-inspection after failing an initial inspection shall be subject to a re-inspection fee when the re-inspection shows that the owner's dwelling still fails to comply with the provisions of this article. The re-inspection fee shall not be imposed when the owner's dwelling passes the re-inspection. Re-inspection fees adopted by the city council shall be charged.

(d) Removal of occupant. If any occupant fails to comply with an order to vacate a dwelling, the administrator may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed ten days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the administrator produces a certified copy of an ordinance adopted by the housing appeals board pursuant to this article authorizing the administrator to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the

execution of such judgment may be taken as provided in G.S. 7A-227. An action to remove an occupant of a dwelling may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the housing appeals board has ordered the administrator to proceed to exercise his or her duties under this article to vacate and close or remove and demolish the dwelling.

(e) Nothing in this section shall be construed as a waiver of the housing certificate requirements in subsection 10-239(e)."

Section 18. City Code Section 10-308 shall be amended to delete the stricken through language where noted below:

"Sec. 10-308. Procedure for enforcement.

(a) *Preliminary investigation.* Whenever it appears to the administrator that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by this division, the administrator shall undertake a preliminary investigation.

(b) *Complaint and hearing.* If the preliminary investigation discloses evidence of a violation of the minimum standards established by this division, the administrator shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the administrator at a place within the county, not less than ten days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the administrator.

(c) *Procedure after hearing; issuance of order.*

- (1) If, after notice and hearing, the administrator determines that the nonresidential building or structure has been maintained in that the property meets the minimum standards established by this division, the administrator shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof a copy of said determination and the matter shall be closed.
- (2) If, after notice and hearing, the administrator determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by this division, the administrator shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order in accordance with the provisions of either subsections (c)(3) or (c)(4) and subject to the limitations set forth in this division.
- (3) If the administrator determines that the cost of repair, alteration, or improvement of the nonresidential building or structure would not exceed 50 percent of its then current value, then the administrator shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either:

- a. Repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by this division, or
 - b. Vacate and close the nonresidential building or structure for any use.
- (4) If the administrator determines that the cost of repair, alteration, or improvement of the nonresidential building or structure would exceed 50 percent of its then current value, then the administrator shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either:
 - a. Remove or demolish the nonresidential building or structure, or
 - b. Repair, alter or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this division.
- (d) *Failure to comply with order; adoption of ordinance by housing appeals board.*
- (1) If the owner fails to comply with an order to either:
 - a. Repair, alter, or improve the nonresidential building or structure, or
 - b. Vacate and close the nonresidential building or structure, the administrator may request that housing appeals board adopt an ordinance ordering the administrator to cause such nonresidential building or structure to be repaired, altered, or improved in order to bring it into compliance with the minimum standards established by this division or to be vacated and closed for any use. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following the housing appeals board adoption of an ordinance, the administrator may cause the building or structure to be either repaired or vacated and closed for any use. The administrator may cause to be posted on the main entrance of any nonresidential building or structure so closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." ~~Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a class 3 misdemeanor.~~
- (2) If the owner fails to comply with an order to either:
 - a. Remove or demolish the nonresidential building or structure, or
 - b. Repair, alter, or improve the nonresidential building or structure, the administrator may request that the housing appeals board adopt an ordinance ordering the administrator to cause such nonresidential building or structure to be removed or demolished. No ordinance shall be adopted to require removal or demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with this division. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following the housing appeals board adoption of an ordinance, the administrator may cause the building or structure to be removed or demolished."

Section 19. City Code Section 10-320 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 10-320. Violations; penalty; fee; remedies.

(a) It shall be unlawful for the owner of any nonresidential building or structure to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close or remove or demolish the same, upon order of the administrator duly made and served as herein provided, within the time specified in such order, and each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense.

(b) It shall be unlawful for the owner or agent of the owner in charge of such nonresidential building or structure with respect to which an order has been issued pursuant to this division, to occupy or permit the occupancy of the same in a dilapidated or deteriorated condition found to be unfit for any use in violation of such order for its repair, alteration or improvement or its vacation, closing or demolition, and each day that such unlawful occupancy continues after the expiration of the time prescribed in the order to repair, alter, improve, vacate, close or demolish such nonresidential building or structure shall constitute a separate and distinct offense.

(c) Any person that fails to comply with any of the provisions of this division shall be subject to an initial civil penalty in the amount of \$300.00 and an additional civil penalty of \$300.00 shall be imposed each month. The penalty shall be imposed until the nonresidential building or structure is brought into compliance. However, the maximum cumulative civil penalty shall not exceed \$5,000.00. This penalty may be recovered by the city in a civil action in the nature of debt if the person does not pay the same within 30 days after the initial day of noncompliance.

(d) The owner of any nonresidential building or structure who fails to repair or vacate and close it, or demolish or remove it, upon order of the administrator duly made and served as herein provided, within the time specified in such order, shall be subject to an administrative fee in an amount set by the city council for noncompliance. This fee allows the city to recover some of its administrative costs incurred due to the owner's failure to comply with the administrator's order described herein.

~~(e) The violation of any provision of this division shall constitute a misdemeanor and shall be punishable in accordance with section 1-9.~~

~~(f)~~ A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by G.S. 160A-175. The city shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien.

~~(g)~~ This section is adopted pursuant to Section 102.1 of the Charter and other applicable statutes.”

Section 20. City Code Section 14-4 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 14-4. Promulgation and enforcement of rules.

The city manager is authorized, subject to the approval of the city council, to make and carry out and enforce suitable rules and regulations for the operation and maintenance of the city cemeteries not inconsistent with this chapter. In addition to any other remedy available in the Code, ~~it shall be a misdemeanor punishable by a maximum fine of \$500.00 unlawful~~ for any person to fail, neglect, or refuse to comply with such rules.”

Section 21. City Code Section 14-6 shall be amended to add the underlined language where noted below:

“Sec. 14-6. Cremains.

The city manager shall designate an area within city cemeteries for the scattering of cremains. The scattering of cremains in any city cemetery, except within the area designated by the city manager, is prohibited. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 22. City Code Section 14-7 shall be amended to add the underlined language where noted below:

“Sec. 14-7. When burials and disinterments prohibited.

Burials and disinterments are prohibited in city cemeteries on Easter Day, Christmas Day, Thanksgiving Day, and Independence Day (July 4th). In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 23. City Code Section 14-9 shall be amended to add the underlined language where noted below:

“Sec. 14-9. Entering cemeteries after closing hours.

No person shall enter any city cemetery except during the hours in which they are open to the public as set forth herein, except upon permission first granted by the cemetery manager. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 24. City Code Section 14-10 shall be amended to add the underlined language where noted below:

“Sec. 14-10. Ingress and egress; climbing walls.

It shall be unlawful for any person to enter the enclosures or grounds of the city cemeteries, or to go out therefrom, except at the gates located at the proper places of entrance and exit to and from such cemeteries, or to mount or walk or run upon the walls, fences thereof. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 25. City Code Section 14-11 shall be amended to add the underlined language where noted below:

“Sec. 14-11. Advertisements, posters, etc.

No advertising of any description shall be permitted within any of the city cemeteries. No bills, posters, placards, pictures, or any other like or similar device shall be attached or posted on either the inside or outside of any wall or fence enclosing any of the city cemeteries. In

addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 26. City Code Section 14-12 shall be amended to add the underlined language where noted below:

"Sec. 14-12. Trucks and wagons forbidden.

Commercial trucks and wagons, or other similar vehicles or equipment that are deemed to be a nuisance by the cemetery manager, shall not be permitted inside the gates of any of the city cemeteries, unless engaged in cemetery business. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 27. City Code Section 14-13 shall be amended to add the underlined language where noted below:

"Sec. 14-13. Bicycle, horseback, and other similar activities prohibited.

(a) Horseback riding, riding of bicycles or go-carts, three and four wheelers, skating, skate boarding, rollerblading, jogging and other substantially similar activities are hereby prohibited in the city cemeteries.

(b) This section shall not apply to law enforcement officers while in discharge of their official duties.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 28. City Code Section 14-14 shall be amended to add the underlined language where noted below:

"Sec. 14-14. Driving on roads; speed limits.

No person shall drive a vehicle on any part of the grounds of the city cemeteries except upon the main roads and avenues provided therein for vehicular traffic. The speed of vehicles in the cemeteries shall not exceed 15 miles per hour. In addition to any other remedy available in the Code, violation of this section is an infraction."

Section 29. City Code Section 14-16 shall be amended to add the underlined language where noted below:

"Sec. 14-16. Disturbances.

Any person disturbing the quiet and good order of any of the city cemeteries by unreasonably loud noise of any kind may be ejected from the grounds. Any person refusing to leave the cemetery when notified to do so for any disturbance, disorderly conduct or other violation of any of the regulations or ordinances concerning such cemetery, shall be guilty of a misdemeanor. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 30. City Code Section 14-17 shall be amended to add the underlined language where noted below:

“Sec. 14-17. Defacing or removing property generally—Flowers, etc.

It shall be unlawful for any person in any way to disturb any grave; deface, pull up or remove anything put or placed to mark a grave, or any wall, fence or enclosure around a grave, or any flowers, shrubs, or trees on any cemetery lot or elsewhere in the cemetery; provided, that the same shall not be a violation if done in compliance with the rules and ordinances pertaining to the cemeteries under a permit duly granted by the cemetery manager. The city shall not be liable for markers, monuments, floral pieces, baskets, or frames in which floral pieces are attached whether such markers, monuments, floral pieces, baskets or frames in which floral pieces are attached are lost, misplaced, broken or damaged due to weather conditions, thieves, vandals, or other causes. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 31. City Code Section 14-18 shall be amended to add the underlined language where noted below:

“Sec. 14-18. Same—Monuments, etc.

It shall be unlawful for any person willfully and without authority to defile, deface, desecrate, place any mark upon or otherwise injure any monument, headstone, or marker contained in any cemetery duly and lawfully maintained. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 32. City Code Section 14-19 shall be amended to add the underlined language where noted below:

“Sec. 14-19. Animals.

It shall be unlawful for any person to allow his or her animal, except service animals trained to assist the person with his or her specific disability, to enter any city cemetery, and all dogs and fowl, except said service animals, found within the enclosures or grounds of any city cemetery shall be impounded. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 33. City Code Section 14-20 shall be amended to add the underlined language where noted below:

“Sec. 14-20. Grave mounds; permanent boxes, urns, etc., on graves or lots.

No grave mounds will be permitted in any city cemetery. The placing of permanent boxes, urns, metal ornaments, concrete ornaments, wind socks, noncommemorative flags, or similar items deemed by the cemetery manager to be inappropriate or unsightly are prohibited upon any grave or lot within the cemetery. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 34. City Code Section 14-21 shall be amended to add the underlined language where noted below:

“Sec. 14-21. Trees, shrubs, other plants, floral arrangements planting and removal.

(a) *Consent and approval.* No trees, shrubs or plants shall be planted, pruned, or removed in the city cemeteries without the consent and approval of the cemetery manager. The cemetery manager shall have the authority to prune, remove or transplant any tree, shrub, plant or other growth upon a lot when he or she may consider such a course necessary for the general beauty, welfare and best interest of the cemetery.

(b) *Planting permitted.* Planting is permitted only on cemetery lots with upright monuments and a minimum of four grave spaces. No evergreens shall be planted on the corners of any lot; no shrubbery of any kind shall be planted nearer than 18 inches from the lot line and must be of dwarf size and not exceed the height of the monument when fully grown. The planting of shrubs and trees on a lot shall conform to the general landscape features of the grounds.

(c) *Shrubbery and planted flower prohibited in certain areas.* Shrubbery and planted flowers are prohibited in that portion of Maplewood Cemetery Annex bounded on the west by Anderson Street, on the south by Morehead Avenue, on the east by Chapel Hill Road and on the north by a branch or creek, and in all sections opened on or after August 1, 1987 in Beechwood Cemetery, except in areas specifically designated and approved by the cemetery manager, and in these areas so designated and approved, shrubbery and planted flowers may be furnished and planted by the city.

(d) *Removal or pruning when detrimental.* If any trees, shrubs, or other plants situated in any lot shall, by means of their encroaching roots or branches, become detrimental to the adjacent lots, driveways or walks the cemetery manager is authorized and empowered to enter onto the lot and remove or trim any trees or shrubs that have become objectionable.

(e) *Removal of nonconforming or unsightly flowers, etc.* The cemetery manager shall have authority to remove all floral designs, flowers, weeds, plants, breakable containers, glass, clay, wire or any dangerous or potentially dangerous item.

(f) *Number of floral arrangements allowed during certain period; exception.* Between March 1 and November 1, more than one floral design or floral arrangement per grave is prohibited in city cemeteries, except for a period of seven days following interment.

(g) *Available remedies.* In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 35. City Code Section 14-22 shall be amended to add the underlined language where noted below:

“Sec. 14-22. Floral arrangements in city cemeteries.

In any city cemetery, all floral designs or floral arrangements, other than those placed in the vase or container, are prohibited during the grass mowing seasons from March 1 to November 1. During this period vases must be attached to the marker. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 36. City Code Section 14-23 shall be amended to add the underlined language where noted below:

“Sec. 14-23. Interment—Notice.

Notice of interment in any of the city cemeteries must be given to the cemetery manager not less than 24 hours in advance, at which time the precise location and payment for the interment must be completed. Notice for interment to be held on Sunday or holiday shall be given to the cemetery manager not later than 11:00 a.m. of the preceding day. Holiday burials shall start no later than 12:00 p.m. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 37. City Code Section 14-28 shall be amended to add the underlined language where noted below:

“Sec. 14-28. Grave liner approval.

In all cases in which the casket is not placed in an approved vault, no interment in any city cemetery shall be permitted unless a grave liner of concrete or such other material as may be approved by the cemetery manager is installed in the grave to contain the casket. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 38. City Code Section 14-29 shall be amended to add the underlined language where noted below:

“Sec. 14-29. Approved materials used for cemetery vases or containers.

Cemetery vases or containers that retain artificial or fresh flowers must be made of durable material, such as concrete, steel, brass, or bronze. Glass, fiberglass, plastics, tin, or other non-durable type fibers are prohibited from being placed on graves in city cemeteries. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 39. City Code Section 14-47 shall be amended to add the underlined language where noted below:

“Sec. 14-47. Location to be determined by city.

The location of markers, monuments, and mausoleums shall be determined by the cemetery manager and when located shall not be removed except on written approval of the cemetery manager. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 40. City Code Section 14-48 shall be amended to add the underlined language where noted below:

“Sec. 14-48. Permit, bond and insurance for persons installing monuments or other memorials.

No monument, marker, urn or mausoleum may be set or moved in the cemetery except by a person holding a permit from the cemetery manager to do such work. The cemetery manager will issue permit only when satisfactory evidence is furnished that the applicant has complied with the laws with reference to monument dealer and is qualified to perform the work for which employed. A permit shall be revoked at any time for violation of the cemetery rules or for other reason satisfactory to the cemetery manager. The city may require of any dealer, bond insurance securing performance or liability insurance indemnifying the city and the public from any negligence, and guaranteeing faithful performance of all work. The permit fee will be paid at the cemetery manager's office. The placement of markers shall occur during normal business hours only after receiving permission from cemetery manager. The cemetery manager or designated staff person shall accompany the person or business that is installing the marker. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 41. City Code Section 14-49 shall be amended to add the underlined language where noted below:

“Sec. 14-49. Application for placement.

No memorial may be brought into the cemetery unless and until duplicate written applications, signed by the owner and monument dealer holding a permit, on forms prescribed, are filed with the cemetery manager and written approval has been received from the cemetery manager. All information requested on the forms or by this chapter must be furnished, and, after approval, payment of charges for erection of the foundation (where applicable) shall be paid in advance, and no memorial shall be brought into the cemetery grounds until the dealer has been notified that the foundation is ready. Monument dealers are required to inspect the lot and study the size, location and contour of the lot and surrounding lots and monuments before making application, and to certify such fact in the application and that the proposed memorial complies with all rules and regulations of the cemetery. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 42. City Code Section 14-50 shall be amended to add the underlined language where noted below:

“Sec. 14-50. Monument specifications foundations.

(a) Monuments shall be placed or erected only in designated sections of city cemeteries determined by the cemetery manager. Such monuments shall be placed on lots with four or more grave spaces in the designated sections. Only one monument may be placed upon any one lot. The location of all monuments shall be subject to the approval of the cemetery manager.

- (1) The cemetery manager shall have discretion in the designated sections to allow monuments to be placed in the center of the lot. The grave spaces in such a lot may be sold to individual owners. Each person owning a grave space in this type of a lot shall have equal monument space to place burial information (such as the deceased person's name) on a common monument. Flat markers are prohibited in these designated sections.

(2) When an individual grave space in a monument lot as set forth in subsection (a)(1) of this section is transferred, the burial information shall be removed from the face of the monument. At the time of burial, use of each individual monument space shall be paid for in full. If the individual grave space is purchased back by the city the original fee for the use of the monument space shall be refunded less the cost incurred to remove the burial information. If the grave space is sold to someone other than the city the cost of any changes to the monument will be the responsibility of the new owner.

(b) A monument lot is defined as any lot in a section so designated by the cemetery manager that has four or more grave spaces. A nonmonument lot is defined as any lot located in a section where monuments are prohibited.

(c) When unnecessary hardship would result from carrying out the strict letter of this section, the cemetery manager may authorize variation from the terms of this article if said variance involves a section of the city cemeteries designated for monuments, would not unduly interfere with grounds maintenance or future burials and would not be injurious to the general appearance of the section in which the lot is located. City council shall set a variance application fee for requesting a variance.

(d) No monument shall be placed or erected which shall have a face greater than 15 percent of the lot area, nor with a width greater than 60 percent of the average width of the lot.

(e) No monument shall be placed or erected on any lot unless such monument shall be a minimum of two feet in height, not including the base, two feet in width and eight inches thick, and the length shall not exceed 60 percent of the lot width, provided that the cemetery manager may authorize reasonable exception within old Maplewood Cemetery and annex A of such cemetery only to conform to existing monuments therein.

(f) All monuments shall be constructed of first-quality granite or marble only.

(g) The foundation for all monuments shall be at least four feet deep unless solid rock or other suitable conditions, approved by the cemetery manager as being safe and substantial, are encountered at less depth. The cemetery manager shall issue any other specifications as may be necessary for the proper setting of monuments generally or individually. Foundations shall be constructed by cemetery employees under the direction of the cemetery manager at the expense of the lot owner.

(h) Orders for foundations shall be submitted to the cemetery manager at least five days before the monument shall be set and no monument shall be set until notice to proceed has been given by the cemetery manager.

(i) The fronts, backs, and tops of all monuments shall be finished in either a polished, steeled, or axed finish.

(j) In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 43. City Code Section 14-52 shall be amended to add the underlined language where noted below:

"Sec. 14-52. Mausoleum locations; specifications; foundations, crypt placement.

The requirements as to mausoleums in city cemeteries shall be as follows:

- (1) No mausoleum shall be erected in city cemeteries, except upon lots specifically designated by the cemetery manager for that purpose.
- (2) No mausoleum shall be erected on any lot within the city cemeteries until complete plans and specifications shall have been submitted to the cemetery manager for approval and permit issued thereof.
- (3) Mausoleums shall be constructed of first quality granite or marble with outside walls to be not less than six inches in thickness.
- (4) Foundations for mausoleums shall be constructed to specifications of the director of building inspections. The expense of the foundation must be paid by the lot owner prior to pouring the foundation, Foundations shall not ordinarily be less than six feet deep unless specifically authorized by the cemetery manager. Orders for foundations shall be submitted to the cemetery manager at least ten days before the mausoleum is to be constructed, and no mausoleum shall be constructed until notice to proceed has been given by the cemetery manager and the city-county inspections department has issued a building permit.
- (5) No more than one crypt may be placed above another crypt except in family mausoleums. Three crypts may be placed above another crypt in family mausoleums. A family mausoleum is defined as a mausoleum located in one of the city owned cemeteries that is located on a specific lot, deeded to a specific person, and constructed with private funds, with all designs and sizes approved by the city-county inspections department. A family mausoleum may range in sizes from one to several crypts and must conform to the boundary restrictions outlined in this chapter.

In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 44. City Code Section 14-53 shall be amended to add the underlined language where noted below:

“Sec. 14-53. Markers—Placement; specifications.

The requirements as to markers in the city cemeteries shall be as follows:

- (1) No more than one marker may be placed on any grave within the city cemeteries, except where a single grave space has been divided into two cremation spaces for urn or infant burials.
- (2) Single markers which shall be placed on any grave within the city cemeteries shall be 12 inches in width, and 24 inches in length, and six inches thick; provided that standard markers furnished to the family of any deceased veteran by the United States government, and which may not be within the limits specified herein, may be placed on any grave of any deceased veteran. Single markers which shall be placed on any grave in sections 16, 17, 18, 19, Maplewood Cemetery shall be 12 inches in width, 24 inches in length, and six inches thick, with rough or smooth sides. Such markers must include a vase located inside the base of the marker area. Companion markers or double markers are allowed in the above sections provided the markers shall be 12 inches in width, 48 inches in length, and six inches thick, with rough or smooth sides. Such markers must include a vase located inside the base of the marker area.
- (3) All grave markers shall be constructed of first quality granite or marble, or of bronze.

- (4) All markers will be installed at grade level.
- (5) Bronze markers shall be 12 inches wide and 24 inches long; and if a vase is attached, the vase shall not be included in the overall dimensions of the marker. Bronze markers shall be installed in a concrete base, granite or marble base, so as to lie flush with the ground.
- (6)
 - a. All graves shall have a permanent marker.
 - b. The owner will have six months in which to provide a suitable marker or monument. The owner must present evidence to the city that the grave has been marked or that owner has signed a contract for such marker or monument.
- (7) In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 45. City Code Section 14-55 shall be amended to add the underlined language where noted below:

Sec. 14-55. Markers—Floral vase attachments in sections 16, 17, 18, 19 of Maplewood Cemetery and sections F and G of Beechwood.

All grave markers in section 17 of Maplewood Cemetery, and in all sections opened on or after August 1, 1987, in any city cemetery, must be of a design to which a vase can be attached. Markers installed after July 1, 2000, in sections 16, 18 and 19 of Maplewood and sections F and G of Beechwood must be of a design to which a vase can be attached. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 46. City Code Section 14-57 shall be amended to add the underlined language where noted below:

"Sec. 14-57. Enclosures around lot or grave spaces.

No coping, curbing, fencing, plantings or enclosures of any kind shall be permitted around any lot or grave space within the city cemeteries. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 47. City Code Section 14-80 shall be amended to add the underlined language where noted below:

"Sec. 14-80. Sales to corporations and business concerns.

Sales of cemetery lots or columbarium niches to any corporation or business concerns are hereby expressly forbidden. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 48. City Code Section 14-81 shall be amended to add the underlined language where noted below:

“Sec. 14-81. Speculation prohibited.

It shall be unlawful for any person to buy or otherwise acquire any city cemetery lot or columbarium niche for the purpose of sales or exchange the same for speculation or for profit or gain, or to sell or exchange burial space in any such lot or niche for profit or gain. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 49. City Code Section 14-82 shall be amended to add the underlined language where noted below:

“Sec. 14-82. Procedure for transfer.

(a) It shall be unlawful for any person to sell or transfer any lot or columbarium niche in the city cemeteries without first obtaining the consent of the city manager. The city manager shall consent to transfer upon determining that all owners of the lot or niche have signed the transfer.

(b) Whenever any sale and transfer of any city cemetery lot or niche has been approved by the city manager, such transfer shall not be valid unless the transferee or the transferor presents the deed in question to the city clerk, who shall make a notation thereon, and on the copy of the same in a book of entries showing the date of transfer and the name of transferee.

(c) An administrative fee set by the city council will be charged to cover the expenses of handling the transaction for each individual transfer document and payment is due at the time of the request for transfer.

(d) In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 50. City Code Section 14-83 shall be amended to add the underlined language where noted below:

“Sec. 14-83. Procedure and fees for disinterment.

(a) No body shall be disinterred from the city cemeteries without written permission of the persons determined by the city manager to be necessary after consultation with the city attorney or attorney's designee. Person shall include surviving spouse and next of kin as defined by the General Statutes of North Carolina. The written permission shall be on a form approved by the city manager.

(b) The city manager upon evidence that the request for disinterment is proper shall approve it and forward it to the city clerk. The city clerk shall notarize the approved disinterment form and make record in the book of entries showing the date of disinterment and the name, and new location of the burial of deceased.

(c) Each disinterment charge will be assessed in accordance with the fee established by city council. The time allowance for each disinterment shall not exceed four hours. An excess time charge will be assessed in increments of each one-half hour, thereafter.

(d) An administrative fee set by the council will be charged to prepare each instrument of disinterment and payment is due at the time of the request for disinterment.

(e) In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 51. City Code Sec. 14-48. Penalty. is repealed.

Section 52. City Code Section 18-21 shall be amended to add the underlined language, and delete the language stricken through, where noted below:

“Sec. 18-21. Administration of the livable wage.

(a) Each service contractor shall pay its employees working on city service contracts a livable wage during those hours that the employees work on city service contracts.

(b) The city has determined that it is an important goal to ensure that employees of its service contractors earn a livable wage, and has therefore made it mandatory that contractors bidding on city service contracts comply with this chapter. In order to accomplish the statutory objectives of this chapter, the city narrows its pool of eligible contractors, because some contractors will not be eligible for consideration for such contracts. Therefore, when a service contractor who has been awarded a city service contract subject to this chapter fails to fulfill the requirements of this chapter, the city suffers damages. The precise dollar amount of those damages is difficult to ascertain. Therefore, all service contracts falling under this chapter shall include language in substantial conformance with the following paragraph:

"In the event of a finding by the city manager or a judicial officer that any service worker has been paid less than the compensation to which the service worker is entitled under the city's livable wage ordinance, contractor shall make restitution to the service worker for the amount due. Contractor shall also pay liquidated damages to the city in the amount of \$50.00 per day for each employee so underpaid, provided, however, that these damages shall not be assessed for wage underpayment violations to any individual which amount to a total of less than \$1.00 in any payroll period. Should a service worker be found to have been discriminated against for seeking to enforce the provisions of the city's livable wage ordinance, and if the service worker has been terminated from employment, he or she shall be reinstated upon an order to do so from the city manager or a judicial officer. A flyer stating the city's livable wage amount shall be posted at the workplace of every service contractor in a location easily seen by all employees."

(c) When a service contractor has been found to have failed to pay a livable wage in the course of performing more than three separate service contracts in a two-year period, the city manager may prohibit that service contractor from participating in future service contracts for up to three years.

(d) Within one year from the date of work performed on a service contract, a service worker may file a protest in writing with the city manager claiming that the amount of wages paid to that worker on that service contract was less than the livable wage at the time the work was performed.

(e) A service contractor shall not discharge, reduce the compensation or otherwise discriminate against any service worker for seeking to enforce the provisions of this chapter. Actions protected under this chapter include, but are not limited to, making a complaint to the city manager, participating in any city proceedings, or making use of any civil remedies. If any violation of this subsection is found to have occurred, the city manager may order appropriate restitution and the reinstatement of such service worker, in accordance with the terms of the service contract.

(f) The city may withhold or cause to be withheld from the service contractor so much of any accrued payments owed to the contractor as may be necessary to:

- (1) Pay the service workers employed by the service contractor the full amount of wages required by the provisions of this chapter; and
- (2) Satisfy any liability of the contractor for liquidated damages accrued under the terms of the service contract.

The city may withhold payments from any service contractor who has failed to post and keep posted a copy of the livable wage as required herein, until such default of the service contract's terms shall have been corrected.

(g) The city manager shall cause investigations to be made as may be necessary to determine whether there has been compliance with the provisions of this chapter, the regulations promulgated thereunder, and those contained in the service contract. The service contractor shall permit representatives of the city to observe work being performed upon the work site, to interview service workers and to examine the books and records relating to the payrolls on the project being investigated to determine the correctness of classifications and any payment of proper regular and overtime rates as required. All such information provided by the service contractor will be treated as confidential, to the extent permitted by G.S. ch. 132, the Public Records Law, as it may be amended from time to time. Complaints of alleged violations shall be investigated promptly and statements, written or oral, made by a service worker shall be treated as confidential and shall not be disclosed to the service contractor without the consent of the service worker.

(h) If necessary for the enforcement of this heading, the city manager may issue subpoenas, compel the attendance and testimony of witnesses and the production of books, papers, records, and documents relating to payroll records necessary for investigations and hearings. Any such subpoena shall be served by the sheriff of the county. In case of refusal to obey or fully comply with any such subpoena, the person not complying may be summoned before the general court of justice, and upon failure to give satisfactory explanation of such failure or refusal, the court shall find the failure to be a misdemeanor ~~violating section 19 of the City Charter, such violation punishable by a fine not exceeding \$100.00 per day or imprisonment as allowed by law for a period not exceeding 30 days.~~ In addition, the general court of Justice may issue any civil orders as may be within its jurisdiction in order to enforce subpoenas issued under this chapter.

(i) In addition to any other remedy available in the Code, intentional violation of subsection (a), (b) or (g) is a misdemeanor punishable by a maximum fine of \$500.00."

Section 53. City Code Section 18-22 shall be amended to delete the language stricken through where noted below:

"Sec. 18-22. Intentional violation a misdemeanor.

In the event the city manager shall determine, after notice and hearing, that any service contractor has failed to pay the livable wage or has otherwise violated the provisions of this chapter and that such failure was intentional, no contract shall be awarded to such service contractor, or to any business in which such service contractor has an interest, until one year has elapsed from the date of such determination. ~~Provided, further, that any such intentional violation of the provisions of this chapter shall be a misdemeanor, the maximum fine for which shall be \$500.00. Proceedings before the city manager shall not be considered a pre-condition~~

~~to criminal prosecution under this chapter. Each day's violation shall constitute a separate offense."~~

Section 54. City Code Section 26-1 shall be amended to add the underlined language where noted below:

"Sec. 26-1. Creation of noxious odors in places of assembly.

(a) It shall be unlawful for any person to discharge any artificially compounded mixture of hydrogen sulphide or other gaseous substances with an obnoxious odor in any theater, cafe, restaurant, religious facility building or other building used for public entertainment or public meetings in the city.

(b) It shall be unlawful to sell or possess for the purpose of violating subsection (a) of this section of any such substances which when mixed or blended will create obnoxious odors. The sale or possession of such substances shall be prima facie evidence that the same are intended for the unlawful uses as set forth in subsection (a) of this section.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 55. City Code Section 26-2 shall be amended to add the underlined language where noted below:

"Sec. 26-2. Public urination and defecation prohibited.

Except in designated water closets or toilet facilities, it shall be unlawful for any person to urinate or defecate on any public place, sidewalk, street, alleyway or right-of-way or in any public building or on any private property. Having written permission of the owner or person in lawful possession shall constitute an affirmative defense to the charge of urinating or defecating on private property. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 56. City Code Section 26-3 shall be amended to add the underlined language where noted below:

"Sec. 26-3. Burning animal carcasses and flesh.

It shall be unlawful for any person to burn or cause to be burned, except in an incinerator, any carcass, or flesh of any animal or fowl. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 57. City Code Section 26-24 shall be amended to add the underlined language where noted below:

"Sec. 26-24. Radios and mechanical musical instruments.

It shall be unlawful for any person to maintain and operate in any building or on any premises in the city or on any public street or on any motor vehicle using the streets or any airplane flying over the city, any radio device or mechanical musical instrument or amplifier or device of any kind whereby the sound therefrom is cast directly upon the public streets and places or for the purpose of attracting the attention of the public, or which is so placed and

operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public place, or of persons in neighboring premises; provided, however, this section shall not apply to the actual conduct of auction sales of real estate on or adjacent to the premises to be sold where the auctioneer or auction company is properly licensed; provided, further, nothing herein shall be construed to affect official warning sounds promulgated by the emergency management agency. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 58. City Code Section 26-85 shall be amended to add the underlined language where noted below:

"Sec. 26-85. Damaging, defacing property.

(a) *Buildings used for public or private educational purposes.* It shall be unlawful for any person willfully and without authority to destroy, defile, deface, desecrate, place any mark upon or otherwise damage any building or structure used or designated for use as a place of public or private educational purposes, or any part thereof or appurtenance thereto, or willfully and without authority to break, deface or otherwise damage any book, picture, furniture, ornament, furnishing, musical instrument, article of silver or plated ware or any other chattel or personal property kept in any building or structure for use in connection with public or private educational work.

(b) *Buildings used for religious observance.* It shall be unlawful for any person willfully and without authority to destroy, defile, deface, desecrate, place any mark upon or otherwise damage any building or structure used or designated for use as a place of religious observance or worship or instruction, or any part thereof or appurtenance thereto, or willfully and without authority to break, deface or otherwise damage any book, picture, furniture, ornament, furnishing, musical instrument, article of silver or plated ware or any other chattel or personal property kept in any building or structure for use in connection with religious observance or worship or instruction.

(c) *Violations.* In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 59. City Code Section 26-114 shall be amended to add the underlined language where noted below:

"Sec. 26-114. Distribution of handbills.

It shall be unlawful for any person to place on the streets or sidewalks of the city, or yards adjacent thereto, or in or on automobiles or other vehicles, any loose bills or circulars of an advertising nature. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 60. City Code Section 26-115 shall be amended to add the underlined language where noted below:

“Sec. 26-115. Placing leaflets on vehicles in city parking garages and city off-street parking lots.

It shall be unlawful for any person to place a leaflet of an advertising, political or other nature in or on a vehicle parked in a city parking garage or on any of the off-street parking lots of the city. This section shall not apply to the owner, operator, or passengers of the vehicle. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 61. City Code Section 26-116 shall be amended to add the underlined language where noted below:

“Sec. 26-116. Depositing refuse upon street, etc., generally.

Except as otherwise provided, it shall be unlawful for any person to knowingly throw, place, drop or deposit upon any public sidewalk, street, lane, alley, drive, bridge, overpass, underpass, culvert, branch or catchbasin, or upon any grounds, walk, path, or drive appurtenant to any public building, park, recreation area or facility, or in or about any public swimming pool or facility, or upon any private property or railroad right-of-way without the previous permission of the owner or lessee thereof, any trash, garbage, dirt, rock, debris, paper, cardboard, melon rind, peanut hulls, empty carton or container, bottle, beer can, tin can, chewing gum, rag, glass, napkin, discarded food, refuse, dead animal, box, fruit or fruit peeling, vegetable, sweepings or any other litter, refuse or waste of any kind. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 62. City Code Section 26-117 shall be amended to add the underlined language where noted below:

“Sec. 26-117. Sweeping dirt, etc., upon sidewalk or street; disposition of sweepings.

No householder or business operator or his or her agent, shall sweep from any house, yard, store or elsewhere any dirt, ashes, leaves, yard trimmings or other refuse in or upon the streets, sidewalks or other public ways. Such dirt, ashes, leaves, yard trimmings or other refuse shall be disposed of in accordance with the provisions of this chapter. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 63. City Code Section 26-118 shall be amended to add the underlined language where noted below:

“Sec. 26-118. Prohibited fill material.

No garbage or offensive disease-producing, rodent-producing or insect-producing material shall be dumped in any lot or space for the purpose of filling or for any other purpose. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 64. City Code Section 26-119 shall be amended to add the underlined language where noted below:

“Sec. 26-119. Vehicles littering or soiling streets, etc.

(a) *By deposit of mud, clay on paved streets and other public ways.* It shall be unlawful for any person, being the owner, driver or person in charge or in control of any vehicle, to enter upon the paved streets, sidewalks and other public places with such vehicle in such manner as to cause the excessive deposit of mud or clay or other foreign materials from such vehicle upon the paved streets, sidewalks and other public places so as to litter or soil the same. If it is impractical to clean vehicle tires and wheels before entering the public streets, sidewalks or other public places, the person owning, driving or in charge or in control of any vehicle so littering and soiling streets, sidewalks or other public places shall make suitable provision promptly to clean the streets, sidewalks or other public places upon which such littering or soiling has occurred.

(b) *Scattering dirt, rock, sawdust, etc., from vehicle.* It shall be unlawful for any person, being the owner, driver or person in charge or in control of any vehicle, to scatter therefrom any dirt, rock, sand, cement, coal, sawdust, cinders, ashes or other materials or refuse upon the streets, sidewalks or other public ways of the city.

(c) *Construction of vehicle to prevent scattering of dirt, refuse, etc.* It shall be unlawful for any person, being the owner, driver or person in charge or control of any vehicle, to use such vehicle for hauling any dirt, sand, cement, coal, sawdust, cinders, ashes or other materials or refuse upon the streets, sidewalks or other public ways of the city, unless the vehicle in question is so constructed or covered as to prevent the falling and scattering of such materials or refuse while the vehicle is passing over the streets, sidewalks or other public ways of the city.

(d) *Violations.* In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 65. City Code Section 26-120 shall be amended to add the underlined language where noted below:

“Sec. 26-120. Permission prerequisite to placing building materials upon street or sidewalk.

It shall be unlawful for any person to drop, place or leave any brick, stone, gravel, sand, or other building materials of any kind or nature whatsoever on any public street, sidewalk or other public way, or to permit any person in his or her employ to drop, place or leave any brick, stone, gravel, sand or other building materials of any kind whatsoever, upon any public street, sidewalk, or other public way without immediately removing the same, except upon permission of the transportation department. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 66. City Code Section 26-121 shall be amended to add the underlined language where noted below:

“Sec. 26-121. Duty of seller of goods, etc., of such nature that purchases throw containers, etc., on sidewalks and streets.

It shall be unlawful for any person selling goods, wares or merchandise of such nature that the purchasers thereof throw the containers or wrappers of such goods, wares or merchandise or portions of the goods, wares or merchandise themselves on the sidewalks, streets or other public ways of the city to allow such containers, wrappers or portions of such goods, wares or

merchandise, or any part thereof, to remain thereon. Any person selling goods, wares or merchandise of such a nature shall also keep his or her premises clean and free from such containers or wrappers or portions of goods, wares and merchandise, so that the same will not be blown or otherwise transferred to the streets, sidewalks or other public ways. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 67. City Code Section 26-122 shall be amended to add the underlined language where noted below:

“Sec. 26-122. Rules and regulations as to cleaning and cleanliness of streets.

The director of general services, subject to the approval of the city manager, shall have the authority to establish rules and regulations, consistent with the provisions of this article, governing the cleaning of streets and the maintenance of conditions related to the cleanliness of streets. It shall be unlawful for any person to fail, neglect or refuse to comply with such regulations. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 68. City Code Section 26-123 shall be amended to add the underlined language where noted below:

“Sec. 26-123. Rules and regulations governing litter control.

(a) *Dumping of litter.*

- (1) *Generally.* No person, firm, organization, private corporation, governing body, or the agent or employee thereof shall scatter, spill, place, dump, deposit, drop, throw, discard, leave, cause or permit the scattering, spilling, placing, dumping, depositing, dropping, throwing, discarding or leaving of litter upon any public or private property not owned by him or her in the city unless:
 - a. The property has been designated by the city and the state as a public landfill site for the disposal of litter, the site is being maintained by the city as a public landfill, and the litter is deposited at the landfill in accordance with the rules and regulations for the proper disposal of litter;
 - b. The litter is placed in a private receptacle or other container intended by the owner or tenant of that property on which the receptacle is located for the deposit of litter or is otherwise disposed of in a manner that is in conformity with federal, state and other laws regulating the disposal of waste; or
 - c. The litter is placed in a receptacle maintained and designated by the city for the deposit of litter.

(2) *Prohibitions.*

- a. No person, firm, organization, private corporation, governing body or the agent or employee thereof shall place litter around a public receptacle or on top of a full receptacle so as to result in litter falling outside of the receptacle.
- b. No person, firm, organization, private corporation, governing body, or the agent or employee thereof shall dispose of household or commercial solid waste in receptacles in city parks and recreation areas, sidewalk receptacles designated for pedestrian use or other city owned receptacles.

- c. No person, firm, organization, private corporation, governing body, or the agent or employee thereof shall scatter, spill, place, dump, deposit, drop, throw, discard or otherwise dispose of litter from any motor vehicle or boat into any river, lake, pond, stream or body of water in the city.
- d. No person, firm, organization, private corporation, governing body, agent or employee thereof shall place, throw, leave or abandon on any road, sidewalk, alley or parking facility in the city any glass bottle or the fragments thereof, any broken glass or crockery of any kind, nails, tacks, bricks, bats, or any other article or object capable of and liable to injure or puncture the tires of an automobile, motorcycle, bicycle or other motor vehicle.
- e. No person shall place in a public receptacle: fire or embers, herbicides, liquids, pesticides, poisons, chemicals, dead animals, furniture, large appliances (including, but not limited to, stoves, refrigerators, freezers, washers and dryers), hazardous substances (including, but not limited to, oil and toxic chemicals), construction debris.

(b) *Places of business.*

- (1) The owner, person or organization in control of any property that is open to the public for the transaction of business, as a place for assemblage, recreation or as a public way and, including but not limited to, restaurants, shopping centers, fast food outlets, convenience stores, hotels, motels, industrial establishments, apartment buildings, housing projects, construction sites, loading and unloading docks, gas stations, trailer parks and hospitals and clinics shall at all times keep the premises clean of all litter thrown or left on such premises and shall take all necessary measures, including immediate cleanup of the premises to prevent litter from drifting or blowing onto any adjoining property.
- (2) The owner, person or organization in control of any property named in subsection (b)(1) of this section shall place receptacles of sufficient size and number on the property for the disposal of litter. Such receptacles shall be conspicuously identified as being available for the disposal of litter.

(c) *Other laws.* The provisions of this section are additional and supplemental to G.S. 14-399, which prohibits the littering of publicly and privately owned property.

(d) *Violations.* In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 69. City Code Section 26-235 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

"Sec. 26-235. Violation and penalty.

(a) No person shall fail, neglect or refuse to comply with an order or notice of violation from the city manager or with the provisions of this chapter.

~~(b) Any person who shall violate or fail to comply with any provision of this chapter or any notice or order issued by the city manager pursuant to this chapter shall, upon conviction, be guilty of a misdemeanor and fined the maximum sum of \$20.00 for each such violation or failure to comply.~~

(be) The provisions of this chapter may also be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. The remedies and penalties established by this section are in addition to the specific remedies and penalties established by other sections of this chapter. The remedies and penalties established by this section may be applied in combination with the remedies and penalties of other sections of this chapter or with each other.”

Section 70. City Code Section 30-233 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 30-233. Enforcement of article; remedies.

~~(a) *Criminal remedies.* Conducting business within this city without having paid the privilege license tax imposed by this article, or without valid license issued pursuant to this article, is a misdemeanor, punishable pursuant to G.S. 14-4. Each day that a person conducts business in violation of this article is a separate offense. Payment of a fine imposed in criminal proceedings pursuant to this section does not relieve a person of liability for taxes imposed under this article.~~

~~(b) *Equitable remedies.* In addition to the criminal remedies set forth in subsection (a) of this section, and pursuant to G.S. 153A-123(d), t~~The city may seek an injunction against any person conducting a business in violation of this article.”

Section 71. City Code Section 34-97 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 34-97. Penalties and enforcement.

~~(a) Any person, violating any provisions of this article shall, under G.S. 14-4(a), be guilty of a Class 3 misdemeanor and shall be fined \$500.00.~~

~~(ab) In addition to, or in lieu of the remedy provided in subsection (a), a~~Any person violating any provisions of this article may be subject to an enforcement action brought under G.S. 160A-175(d) and (e) for an appropriate equitable remedy, including for a mandatory or prohibitory injunction commanding the defendant to correct the discrimination prohibited under this article.

~~(be) Each day's continuing violation of any provisions of this article shall be a separate and distinct offense for purposes of all remedies, including civil and criminal.”~~

Section 72. City Code Section 38-7 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 38-7. Violation of rules and regulations of department of recreation.

It shall be unlawful for any person to knowingly violate any rule or regulation adopted by the department of recreation and approved by the city council. Upon conviction, violators shall be punished in accordance with section 1-9. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 73. City Code Section 38-8 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 38-8. Use after closing hours; removing locks and barriers.

(a) In every case in which the department of recreation has posted a notice setting forth the closing time of a particular area, it shall be unlawful for any person to use or be in or on any such park or recreational area or facility after the closing hour set forth on the notice applying to the particular area. The use by, or presence of, any person in such park or recreational area or facility for any purpose after the closing hour applying to such area shall constitute a trespass and the person in question, upon conviction, shall be punished in accordance with section 1-9. This section shall not be construed to apply to persons in or upon such areas in pursuance of or in connection with their official duties.

(b) It shall be unlawful and shall constitute a trespass for any unauthorized person to remove a lock or a barrier installed to prohibit access into a park facility without written permission for that removal by the department of recreation. This prohibition does not apply to employees of the city acting pursuant to employment duties.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 74. City Code Section 38-9 shall be amended to add the underlined language where noted below:

“Sec. 38-9. Hitting golf balls.

It shall be unlawful for any person to drive or hit a golf ball with golf club in or upon any public park or public playground under the supervision and control of the city, except where designated otherwise. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 75. City Code Section 38-10 shall be amended to add the underlined language where noted below:

“Sec. 38-10. Horseback riding.

It shall be unlawful for any person to ride horseback in any public park or playground, except upon bridle paths and areas specifically designated by the director of recreation for such purposes. When the director of recreation designates such bridle paths or other areas wherein horseback riding is permitted, appropriate signs shall be posted. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 76. City Code Section 38-11 shall be amended to add the underlined language where noted below:

“Sec. 38-11. Flying of model airplanes.

It shall be unlawful for any person to fly a model airplane in any park, playground or recreational area or property owned or operated by the city. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 77. City Code Section 38-12 shall be amended to add the underlined language where noted below:

“Sec. 38-12. Dumping rubbish, trash, etc.

It shall be unlawful for any person to dump, scatter or deposit, or to allow or permit the dumping, scattering or depositing of any rubbish, loose paper, trash, garbage, bottles or other refuse in or upon any public playground or public park area within the city. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 78. City Code Section 38-13 shall be amended to add the underlined language where noted below:

“Sec. 38-13. Breaking of glass bottles.

It shall be unlawful for any person knowingly or intentionally to break any glass bottle in any playground, park, swimming or wading pool or any other area in the city which is under the supervision of the department of public recreation. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 79. City Code Section 38-15 shall be amended to add the underlined language where noted below:

“Section 38-15. Same—Concerts in city parks; permit required.

It shall be unlawful for any person to hold or conduct an outdoor musical concert or performance in a city park unless such person shall first apply for and obtain a permit from the city manager authorizing the holding or conducting of such concert or performance. Said permit shall be in addition to the permit required by section 38-14. The city council shall establish by resolution the conditions upon which the city manager shall issue such permits. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 80. City Code Section 38- 20 shall be amended to add the underlined language where noted below:

Sec. 38-20. Motorized boats on city lakes.

Motorized boats shall not be used on lakes owned by the city, except by city employees in the performance of their duties, or by firefighting personnel, law enforcement personnel, EMS personnel, health care workers or providers, military personnel, civil preparedness personnel, emergency management personnel, public works personnel, public utility employees, or other persons authorized by the city manager. In addition to any other remedy available in the Code, violation of this section is a misdemeanor. This section does not apply to Lake Michie or Little River Lake.”

Section 81. City Code Section 38-21 shall be amended to add the underlined language where noted below:

“Sec. 38-21 Alcoholic beverages—Possession and consumption in public buildings and parks.

(a) Definitions. The following words shall have the meanings set forth herein unless the context clearly indicates otherwise:

Alcoholic beverage means any beverage containing at least one-half of one percent alcohol by volume including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(b) Except as is provided in this section, no person shall consume any alcoholic beverage on any property owned or occupied by the city.

(c) The consumption of alcoholic beverages shall be lawful, upon the securing of the necessary permits from the city and the state alcoholic beverage control commission, in the following facilities and areas owned or operated by the city:

- (1) West Point on the Eno;
- (2) The police training and recreational facility at Lake Michie;
- (3) The plaza on top of the Durham Centre Parking Garage (Peoples Plaza);
- (4) Forest Hills Park;
- (5) The Durham Armory;
- (6) The CCB Plaza (being the area bounded by Chapel Hill St., Corcoran St., Parrish St., and Market St.);
- (7) The Spruce Pine Lodge in the Lake Michie Recreation Area, including its lawn, the associated picnic areas, and the playfield;
- (8) The Boat House in the Lake Michie Recreation Area, including its deck;
- (9) The Historic Parrish Street Forum;
- (10) The Leigh Farm Park;
- (11) Rock Quarry Park;
- (12) Duke Park;
- (13) Oval Drive Park;
- (14) Southern Boundaries Park;
- (15) Northgate Park;
- (16) Other parks and recreation locations only when such spaces are being used for permitted events that are open to the general public; and
- (17) The following parks located within the downtown area of the city only when such parks are being used for events that are open to the general public: Muirhead Plaza, located at Five Points; Rotary Park, located at the intersection of Mangum Street and Morgan Street; and the park at the intersection of Mangum and Main Streets.

(d) Any person desiring to provide alcoholic beverages for consumption in one of the facilities or areas listed in subsection (c) of this section shall obtain a permit from the city manager or the city manager's designee and shall abide by any and all rules or regulations approved by the city manager concerning such consumption. Any issued permit shall specify the grounds and buildings of any of the named facilities and areas in which the consumption of

alcohol has been approved. The permit may be issued only to groups sponsored by the City of Durham or groups renting City of Durham facilities.

(e) The consumption of alcoholic beverages shall be lawful, upon securing the necessary permits from the state alcoholic beverage control commission, in the following facilities and areas which have been leased from the city by outside agencies or are managed by a third party on behalf of the city:

- (1) The property leased by the city to the Museum of Life and Science;
- (2) Durham Convention Center and its Plaza;
- (3) Durham Arts Council Building;
- (4) Carolina Theatre Building;
- (5) Farmers' Market Pavilion, the Sister Cities Grove (being the area bounded by the Farmers' Market Pavilion on the south, Roney Street on the west, the adjacent private property on the north, and Foster Street on the east), and the grassy meadow on the east side of Foster Street of Durham Central Park. However, the skate park area of Durham Central Park shall be excluded from alcohol consumption;
- (6) Durham Athletic Park; provided, however, that the contents of any beer or wine sold in bottles or cans must be poured into cups;
- (7) Durham Bulls Athletic Park; provided, however, that the contents of any beer or wine sold in bottles or cans must be poured into cups; and
- (8) Durham Performing Arts Center and its plazas.

Nothing in this section shall be interpreted as preventing any of the agencies operating facilities listed in this subsection from determining under what circumstances, if any, they will permit the consumption of alcoholic beverages in those facilities.

(f) The following permit terms for alcohol usage shall apply:

- (1) Any person serving alcoholic beverages shall post on site at all times during which alcoholic beverages are consumed one or more persons who shall be responsible for ensuring that no alcoholic beverages are provided to underage or intoxicated persons;
- (2) Participants, guests and attendees of private and public functions where alcohol is served shall not be permitted to bring their own alcohol to an event; and
- (3) City facilities leased from or managed pursuant to a third party agreement shall be governed by those agreements if they address liability requirements for events where alcohol may be served. Any person desiring to serve alcoholic beverages shall maintain general liability insurance applicable to the serving of alcoholic beverages at the event and shall name the city as an additional insured on the policy with respect to claims arising out of the use of the property owned or operated by the city. A certificate evidencing such insurance shall be submitted to the city manager's office or the manager's designee prior to the holding of an event where alcoholic beverages are served. Insurance shall be at the rate (combined single limit for bodily injury and property damage liability) designated by the city's risk manager. The city's risk manager may vary or waive any requirements stated in this subsection, depending upon the nature of the event for which the permit is to be issued.

(g) In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 82. City Code Section 38-22 shall be amended to add the underlined language where noted below:

“Sec. 38-22. Parking in city parks.

(a) Unless otherwise designated by signage in a particular lot, no vehicle may park in a parking space in a city park lot longer than three hours.

(b) The director of recreation shall cause appropriate signs or markings to be maintained on each parking lot to which this section applies.

(c) It shall be unlawful for any person to park a vehicle in such way that such vehicle shall not be entirely within the limits of the parking space. It shall be unlawful for any person to park any vehicle across any line or marking of a space.”

(d) It shall be unlawful for any person to cause, allow, permit, or suffer any vehicle registered in the name of or operated by such person to be parked overtime or beyond the period of legal parking time established for any parking space.

(e) It shall be unlawful to wash any vehicle or to make any repairs, except emergency repairs, to any vehicle parked in a park parking lot. In addition to any other remedy available in the Code, violation of this subsection (e) is a misdemeanor.

(f) The provisions of section 13-20 shall not apply to employees of the city acting pursuant to employment duties.”

Section 83. City Code Section 38-84 shall be amended to add the underlined language where noted below:

“Sec. 38-84. Refuse containers—Use required.

All refuse shall be placed in proper containers provided by the city. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 84. City Code Section 38-86 shall be amended to add the underlined language where noted below:

“Sec. 38-86. Permit—Prerequisite to fishing.

No person may fish in the lake except by proper permit issued to such person by the director of recreation or his or her duly authorized representative. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 85. City Code Section 38-88 shall be amended to add the underlined language where noted below:

“Sec. 38-88. Same—For keeping privately owned boat; registration.

A permit to keep a boat on the lake will be sold at the recreation department office only to the owners of a boat, which permit carries with it the right to fish. Not more than three persons will be recognized as the owners of any boat, and each of such owners shall take out a boat permit in his or her name. No boat may be used on the lake by any person not the holder of a

valid permit therefor unless such person is accompanied by the owner of such permit. The spouse and minor children of a holder of an annual permit may accompany the permit holder without payment but shall sign the register. Guests of persons fishing from privately owned boats shall secure a fishing permit. All persons are required to sign the register before going on the lake each time. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 86. City Code Section 38-91 shall be amended to add the underlined language where noted below:

“Sec. 38-91. Boat equipment and numbering.

All boats, whether privately- or city-owned, shall be equipped with at least one approved life preserver for each person, and each boat shall be equipped with a pail to be used for sanitary purposes. Each boat shall be numbered for identification with numerals not less than three inches high and the register shall show the number of the boat used. City-owned boats shall use numbers ten to 99 and privately owned boats from 100 and up. Official boats will use numbers one to nine. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 87. City Code Section 38-92 shall be amended to add the underlined language where noted below:

“Sec. 38-92. Responsibility for wearing life preservers.

It shall be the responsibility of the adult operator of a boat on the lake to make certain that all persons in such boat who cannot swim shall wear a life preserver at all times during which they occupy the boat. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 88. City Code Section 38-93 shall be amended to add the underlined language where noted below:

“Sec. 38-93. Limitations on horsepower and load of boats.

(a) All boats launched on Lake Michie will be restricted to comply with safe passenger load and an appropriate horsepower capacity; both of which will be determined by the size of the boat.

(b) The lake warden shall enforce the safe load restrictions and horsepower capacity standards developed by the United States Coast Guard and the Boating Industry Association for this purpose. These standards shall be posted in public view at the boathouse.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 89. City Code Section 38-94 shall be amended to add the underlined language where noted below:

“Sec. 38-94. Ages of persons in boats.

All persons in boats under 16 years of age must be accompanied by an adult. The number of children under age 12 in any boat may not exceed three, and in no case shall there be more than two children under 12 years per adult person in any boat. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 90. City Code Section 38-95 shall be amended to add the underlined language where noted below:

“Sec. 38-95. Where boats may land.

No shore landings by boat shall be made at other than the designated boat landing. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 91. City Code Section 38-96 shall be amended to add the underlined language where noted below:

“Sec. 38-96. Securing and anchoring of privately owned boats.

Every privately owned boat shall be properly secured near the boat dock of the lake and shall be anchored at the owner's expense and responsibility. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 92. City Code Section 38-97 shall be amended to add the underlined language where noted below:

“Sec. 38-97. When fishing and boating permitted.

Fishing and boating will be permitted between sunrise and sunset only, at which time the warden's office shall remain open. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 93. City Code Section 38-98 shall be amended to add the underlined language where noted below:

“Sec. 38-98. Reports at beginning and conclusion of use of boats.

The person in charge of any boat used on the lake for boating or fishing, shall report prior to and at the conclusion of such use to the lake warden at the dock designated by the city council for such purpose. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 94. City Code Section 38-99 shall be amended to add the underlined language where noted below:

“Sec. 38-99. Causing hazardous wake prohibited.

No boats on Lake Michie shall be operated at such rate of speed or in any manner so as to cause or create a wake of such size or intensity as to be hazardous. The lake warden may

cause the removal of any boat violating the provisions of this section, and may refuse the privilege of future use of the lake of such boat or of any boat by such person. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 95. City Code Section 38-100 shall be amended to add the underlined language where noted below:

"Sec. 38-100. Water skiing prohibited.

Water skiing on the lake is hereby prohibited. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 96. City Code Section 38-102 shall be amended to add the underlined language where noted below:

"Sec. 38-102. Bank fishing.

The regulations applicable to bank fishing shall be as follows:

- (1) Bank fishing shall be under the jurisdiction and supervision of the lake warden and assistant wardens at all times and shall be subject to all rules and regulations passed by the city council, the state board of health and the state wildlife resources commission.
- (2) All persons shall use only those refuse receptacles and sanitary facilities provided by the city.
- (3) All persons shall enter and leave the designated bank fishing area only by the entrance provided.
- (4) No person shall fish except in the area designated for that purpose.
- (5) No person less than 12 years of age may fish unless accompanied by an adult.

In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 97. City Code Section 38-103 shall be amended to add the underlined language where noted below:

"Sec. 38-103. Fishing near dock.

No fishing will be permitted within a radius of 50 feet from the dock of the fishing station of Lake Michie. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 98. City Code Section 38-104 shall be amended to add the underlined language where noted below:

"Sec. 38-104. Areas for picnicking, camping, etc.

Picnicking and cleaning or cooking of fish or other foods on the shore of the municipal reservoir is prohibited, except in the picnic area designated for this purpose. Camping, archery

and other recreation, other than water recreation, shall take place only in those areas designated for such purposes. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 99. City Code Section 38-106 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 38-106. Firearms and fireworks.

(a) No unauthorized person shall fire a gun or pistol or any firecracker or other fireworks from a boat on the lake or from the shore.

(b) No person shall be given a permit who shall have in his or her possession on Lake Michie or the property thereof any firearm or firecracker of any kind, except as provided in section 38-114.

(c) No unauthorized person shall have firearms or fireworks on city-owned land.

(d) The provisions of subsections (b) and (c) of this section shall not apply to the lawful carrying of a concealed handgun by a person pursuant to a permit issued under G.S. 14-415.10 et seq.

(e) In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00. ~~For violation of this section, the maximum fine shall be \$500.00, and the maximum term of imprisonment shall be 30 days.~~

Section 100. City Code Section 38-107 shall be amended to add the underlined language where noted below:

“Sec. 38-107. Pollution of water.

(a) No person shall spit, bathe, swim or put his or her feet in the reservoir or commit any act that will affect the purity of the water.

(b) Any person polluting the waters of Lake Michie in any manner will be prosecuted and such pollution shall be sufficient cause for refusing such person permission to fish or use any city-owned property or facility.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 101. City Code Section 38-109 shall be amended to add the underlined language where noted below:

“Sec. 38-109. Alcoholic beverages—Use.

Except as provided in section 38-21, the use of any alcoholic beverage is prohibited. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 102. City Code Section 38-111 shall be amended to add the underlined language where noted below:

“Sec. 38-111. Where fires may be built; leaving fires unattended.

Fires shall be built only in designated approved ovens. Fires shall never be left unattended. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 103. City Code Section 38-112 shall be amended to add the underlined language where noted below:

“Sec. 38-112. Cutting trees, etc.

The cutting of trees, bushes, shrubs and wildflowers is prohibited. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 104. City Code Section 38-113 shall be amended to add the underlined language where noted below:

“Sec. 38-113. Killing wildlife.

Killing and taking or in any way molesting wildlife is prohibited. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 105. City Code Section 38-115 shall be amended to add the underlined language where noted below:

“Sec. 38-115. Tail race at Flat River pumping station and plant—Use prohibited.

It shall be unlawful for any person to fish, trespass, play, or loiter in or on any portion of the tail race at the Flat River pumping station and plant at Lake Michie. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 106. City Code Section 38-152 shall be amended to add the underlined language where noted below:

“Sec. 38-152. Pollution.

No person may spit, bathe, swim, put any part of the body in, or place any substance (except as authorized or allowed by this article) in Little River Lake or commit any other act that is likely to adversely affect the purity of the water; nor shall any person urinate or defecate at the Little River Lake Area except in designated facilities. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 107. City Code Section 38-153 shall be amended to add the underlined language where noted below:

“Sec. 38-153. Permit.

No person may fish in (whether from the bank or from a boat) or boat on Little River Lake except as allowed by the terms of the permit issued to such person by authorized personnel.

The city council may set fees for the issuance of permits and for the rental of city-owned equipment. The following provisions apply to Little River Lake Area:

(1) *Fishing.*

- a. Bank fishing activities shall be under the supervision of authorized personnel at all times.
- b. No person shall bank or pier fish except in the areas designated for that purpose. No fishing may be conducted from any boat not rented from the city.
- c. No person may enter or leave the designated bank fishing area except by the entrances and exits designated.
- d. No person younger than 12 years of age may fish unless accompanied by an adult.

(2) *Boating.*

- a. Except for emergency, security and maintenance purposes by authorized personnel, as provided by subsection (2)j. of this section, or as directed by authorized personnel, the only means of transportation allowed on Little River Lake are city-owned boats.
- b. Any use of any boat motor other than city-owned electric motors is prohibited with the exception that other types of boat motors may be used by authorized personnel, as provided by subsection (2)j. of this section, or as directed by authorized personnel, for emergency, security, and maintenance purposes.
- c. The permittee for boating shall make certain that all persons who cannot swim shall wear a life preserver at all times during which they occupy the boat for which the permit was issued.
- d. All shore landings shall be made only at the designated boat landing areas.
- e. No more than two children under 12 years per one adult person may be in any boat.
- f. Except for authorized personnel, as provided by subsection (2)j. of this section, boating is prohibited within a radius of 1,000 yards of the intakes and dam of Little River Lake.
- g. After use of a city-owned boat, the permittee shall return it and all other city-owned equipment to the designated area and report to authorized personnel.
- h. No person shall enter, be the operator of, or be a passenger in any boat while under the influence of an impairing substance. No permit may be issued to any person who is under the influence of an impairing substance. Persons in a boat who are under the influence of an impairing substance shall have their permits revoked and shall be conducted back to the dock by the authorized personnel.
- i. The permittee for a boat shall take such action as is needed to prevent passengers from committing any violations of this article or other conduct for which a person may be ejected from the Little River Lake Area.
- j. Nonmotorized boats whose operators have first received a permit may enter the Little River Lake from Little River. The permit shall allow those boats to be on the lake only while crossing the lake for the purpose of reaching the takeout point designated by the city manager on the west side of Highway 501. The boats must proceed without delay to the takeout point and be removed without delay at the takeout point from the Little River Lake Area.

(3) Available remedies. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 108. City Code Section 38-154 shall be amended to add the underlined language where noted below:

“Sec. 38-154. Locations for activities and individuals.

All recreational activities on the Little River Lake Area are prohibited except in the places designated for that purpose. Except as otherwise provided in this article, the manager may designate certain areas as usable for specific recreational uses. No person other than authorized personnel may be on any part of the Little River Lake Area except in the places designated for recreational use. The dam area, including the intake area, spillway area, and pump station area, at Little River Lake shall not be a recreation area. The manager shall cause the premises to be posted, in a manner reasonably likely to come to the attention of the public, with notice not to enter the premises closed to persons who are not authorized personnel. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 109. City Code Section 38-155 shall be amended to add the underlined language where noted below:

“Sec. 38-155. Time limits for activities.

All recreational activities in the Little River Lake Area shall take place only during the times designated by the director of the department of parks and recreation or the director's designee. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 110. City Code Section 38-156 shall be amended to add the underlined language where noted below:

“Sec. 38-156. Alcoholic beverages.

The consumption of any alcoholic beverage in the Little River Lake Area is prohibited. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 111. City Code Section 38-159 shall be amended to add the underlined language where noted below:

“Sec. 38-159. Fires.

Fires in the Little River Lake Area shall be allowed only in designated-approved grills. Fires shall never be left unattended. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 112. City Code Section 38-160 shall be amended to add the underlined language where noted below:

“Sec. 38-160. Digging; flora.

The cutting, tearing, pulling, or otherwise causing damage to trees, bushes, shrubs and wildflowers, and the digging into or scraping of the ground in the Little River Lake Area are prohibited, except by or under the direction of authorized personnel. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 113. City Code Section 38-161 shall be amended to add the underlined language where noted below:

“Sec. 38-161. Wildlife.

Except as otherwise provided by this article, killing, taking, or in any way molesting wildlife in the Little River Lake Area is prohibited. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 114. City Code Section 38-162 shall be amended to add the underlined language where noted below:

“Sec. 38-162. Cleaning of fish.

Cleaning of fish in the Little River Lake Area is prohibited. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 115. City Code Section 38-163 shall be amended to add the underlined language where noted below:

“Sec. 38-163. Metal detectors.

The use of a metal detector on the Little River Lake Area is prohibited, except by or under the direction of authorized personnel. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 116. City Code Section 46-1 shall be amended to add the underlined language where noted below:

“Sec. 46-1. Equipment for decoding coded voice inversion messages; permission of city manager required for sale, use, etc.

(a) It shall be unlawful for any person, without the written permission of the city manager, to sell, own, possess, or use any device, apparatus, or equipment, electronic or otherwise, capable of decoding coded voice inversion messages transmitted by transmitters at the city communications center.

(b) No written permission referred to in this section shall be granted by the city manager until the application for such permission has been approved by the city council.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 117. City Code Section 46-21 shall be amended to add the underlined language where noted below:

“Sec. 46-21. Discharging weapons—Generally.

(a) It shall be unlawful for any person other than an officer authorized by law, or upon a range legally permitted by the chief of police, to discharge or shoot any firearm, pump gun, air rifle, air pistol, BB gun, crossbow, bow and arrow, slingshot, or any other weapon of like kind within the city.

(b) Subsection (a) shall not apply when the weapon is discharged or shot:

- (1) In defense of person or property;
- (2) Pursuant to the lawful directions of a law enforcement officer;
- (3) In a city park for ceremonial or recreational purposes, provided that such person has first obtained, in writing, permission from the director of parks and recreation or his or her designee. In no event shall permission be given for the discharge of live ammunition;
- (4) In a cemetery for the purpose of conducting a military or law enforcement funeral or commemorative exercise provided that such person has first obtained, in writing, permission from the city manager or his or her designee. In no event shall permission be given for the discharge of live ammunition;
- (5) On state-designated game lands; or
- (6) Pursuant to section 6-3, which permits deer archery within the city limits under specified circumstances.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 118. City Code Section 46-22 shall be amended to add the underlined language where noted below:

“Sec. 46-22. Display and possession of dangerous weapons—Prohibited on certain city property.

(a) It is unlawful for any person to display a dangerous weapon while on or in city property, or to leave displayed a dangerous weapon within a motor vehicle while the vehicle is on city property. Notwithstanding the foregoing, this section shall not prohibit the display of a long gun being stored in a locked gun rack in an attended motor vehicle, or a locked unattended motor vehicle, while the vehicle is on city property.

(b) The city manager, or his or her designee, may permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. 14-415.11(c), on the city property identified below. The posting of a prohibition against carrying a concealed handgun at or within an athletic field shall only apply during an organized athletic event when the field has been scheduled for use with the city. Notwithstanding the foregoing, this section shall not prohibit a concealed handgun permittee from storing a handgun within the trunk, glove box, or other enclosed compartment or area within or on a locked motor vehicle while the vehicle is on city property.

- (1) Any city building and its appurtenant premises;

(2) The following recreational facilities:

a. Each athletic field at or within:

1. C.M. Herndon Park located at 511 Scott King Road;
2. C.R. Wood Park located at 417 Commonwealth Avenue;
3. Campus Hills Park located at 2000 S. Alston Avenue;
4. Cook Road Park located at 602 Cook Road;
5. Crest Street Park located at 2503 Crest Street;
6. East Durham Park located at 2500 E. Main Street;
7. East End Park located at 1200 N. Alston Avenue;
8. Hillside Park located at 1301 S. Roxboro Street;
9. Lakeview Park located at 3500 Dearborn Drive;
10. Long Meadow Park located at 917 Liberty Street;
11. Lyon Park located at 1200 W. Lakewood Avenue;
12. Morreene Road Park located at 1102 Morreene Road;
13. Old Chapel Hill Road Park located at 3751 SW Durham Parkway;
14. Old Farm Park located at 7 Hedgerow Place;
15. Old North Durham Park located at 310 W. Geer Street;
16. Oval Drive Park located at 2200 W. Club Boulevard;
17. Pineywood Park located at 400 E. Woodcroft Parkway;
18. Red Maple Park located at 3320 Hinson Drive;
19. River Forest Park located at 1000 Windermere Drive;
20. Rock Quarry Park located at 701 Stadium Drive;
21. Sherwood Park located at 1720 Cheek Road;
22. Southern Boundaries Park located at 400 Third Fork Road;
23. Twin Lakes Park located at 435 Chandler Road;
24. Valley Springs Park located at 3805 Valley Springs Road;
25. Walltown Park located at 1308 W. Club Boulevard;
26. Weaver Street Park located at 3000 E. Weaver Street;
27. Whippoorwill Park located at 1632 Rowemont Drive;
28. Wrightwood Park located at 1301 Anderson Street;
29. Durham Bulls Athletic Park located at 409 Blackwell Street;
30. Durham Athletic Park located at 500 W. Corporation Street.

b. Each of the swimming pools identified below:

1. Campus Hills Pool located at 2000 S. Alston Avenue;
2. Edison Johnson Aquatic Center located at 500 W. Murray Avenue;
3. Forest Hills Pool located at 1639 University Drive;
4. Hillside Pool located at 1221 Sawyer Street;
5. Long Meadow Pool located at 917 Liberty Street.

c. Each of the facilities used for athletic events identified below:

1. Edison Johnson Recreation Center located at 500 W. Murray Avenue;
2. W.D. Hill Recreation Center located at 1308 Fayetteville Street.

(b) For purposes of this section, the following words have the meaning indicated:

Athletic field means an outdoor area used for organized athletic events including any appurtenant facilities.

City property means any building including its grounds, park, recreational facility, playground, cemetery, landfill, parking garage, parking lot, streets, sidewalks, alleyways, or other public property owned by the city or leased by the city as lessee. City property does not include: property leased, subleased or rented by the city to a private person or entity; or ranges legally permitted by the chief of police.

Dangerous weapon means any firearm, pump gun, air rifle, air pistol, BB gun, crossbow, bow and arrow, bowie knife, dirk, dagger, slingshot, loaded cane, metallic knuckles, razor, shuriken, stun gun, switch blade knife, black jack, or any other weapon of like kind.

Handgun means a firearm that has a short stock and is designed to be held and fired by the use of a single hand.

Long gun means a shotgun or rifle which expels a projectile by action of an explosion.

Recreational facility means an athletic field, a swimming pool, or a facility used for athletic events.

Swimming pool means an artificially enclosed body of water intended for swimming or water-based recreation, including any appurtenant facilities used for dressing, storage of personal items, or other uses relating to the swimming pool.

(c) Conduct prohibited by this section shall not apply to:

- (1) Sworn law enforcement officers who are within their jurisdiction;
- (2) Members of the United States armed forces or national guard while in the discharge of their official duties;
- (3) Any person possessing a dangerous weapon in a city cemetery for the purpose of conducting a military or law enforcement funeral or commemorative exercise pursuant to first having obtained written permission from the city manager or his or her designee;
- (4) Any person possessing a dangerous weapon in a city park for ceremonial or recreational purposes pursuant to having first obtained valid written permission from the director of parks and recreation or his or her designee.

(d) In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 119. City Code Sec. 46-28. Penalties. is repealed.

Section 120. City Code Section 46-59 shall be amended to add the underlined language where noted below:

"Section 46-59. Riding on apparatus.

Without the fire chief's permission no person except a member of the fire department may mount or ride any of the automobiles or apparatus being used by the fire department while it is going to or returning from a fire. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 121. City Code Section 46-60 shall be amended to add the underlined language where noted below:

“Sec. 46-60. Congregating at fires.

It shall be unlawful for persons to congregate in the streets or squares adjacent to the fire so as to interfere with the operations of the fire department. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 122. City Code Section 46-62 shall be amended to add the underlined language where noted below:

“Sec. 46-62. Obstructing or damaging fire hydrants.

It shall be unlawful for any person to obstruct the approach to any public or private fire hydrant or to in any manner damage such fire hydrant so as to prevent the use thereof at all times. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 123. City Code Section 46-87 shall be amended to add the underlined language where noted below:

“Sec. 46-87. Use of pine straw mulch.

(a) No pine straw mulch or any other landscaping material with a fire rate of spread more than 24 inches per minute shall be placed within ten feet of buildings with combustible exterior construction.

(b) Exemptions. The word "buildings" in subsection (a) excludes detached one and two family dwellings as defined in the North Carolina Residential Building Code, including Section R101.2, and as amended from time to time. The expression "pine straw mulch" in subsection (a) excludes pine straw that falls from trees located on the same parcel as the building.

(c) The city manager shall adopt a policy to implement this section. The policy shall define "other landscaping material" and "combustible exterior construction." The policy may include any other provisions designed to effectuate the purposes of this section.

(d) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 124. City Code Section 46-149 shall be amended to add the underlined language where noted below:

“Sec. 46-149. Possession of open containers of certain alcoholic beverages; disposal of containers, and consumption of certain alcoholic beverages.

(a) *Definitions.* The following definitions shall apply to this section.

Beer means any malt beverage as defined by section 38-20.

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

Pub bike means a non-motorized device with four wheels, steering for a forward seated driver, eight to 12 passenger saddle seats, and pedals by which the device may be propelled upon a street at a maximum speed of 15 mph when operated upon a level surface. A pub bike shall be equipped with, and maintain in good working order: at least one head lamp which, under normal atmospheric conditions and on a level road, produces a driving light sufficient to render clearly discernible a person 200 feet ahead; rear lamps which exhibit a red light plainly visible under normal atmospheric conditions from a distance of 500 feet to the rear of the pub bike; driver operated brakes adequate to control the movement of and to stop and hold the pub bike, including two separate means of applying the brakes; at least one stop lamp which exhibits a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, actuated upon application of the foot brake; and turn signal lamps by which the driver of the pub bike may indicate to the operator of a vehicle, approaching from either the front or rear and within a distance of 200 feet, his intention to turn from a direct line.

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

Wine means unfortified wine as defined by G.S. ch. 18B.

(b) *Possession of open containers.* No person, other than an occupant of a motor vehicle or a passenger on a pub bike, shall possess an open container of beer or wine on any public street except as permitted in subsection (e) of this section.

(c) *Disposal of containers.* No person shall drop, throw, cast, or deposit any used wine or beer container upon any public street or upon any public or private property without the consent of the owner.

(d) *Consumption of alcoholic beverages on public streets.* No person, other than an occupant of a motor vehicle or a passenger on a pub bike, shall consume beer or wine on any public street except as permitted in subsection (e) of this section.

(e) *Possession and consumption of beer and wine is permitted.* Possession and consumption of beer and wine is permitted within the boundaries and during the event hours of any public, community-sponsored function or celebration being conducted within a public street or other publicly owned area pursuant to a written permit issued by the city manager. This permit may also allow the sale, service, and distribution of beer and wine on designated public streets and areas reserved for the event, subject to all applicable ABC regulations. Prior to the issuance of such a permit, the city manager must establish the boundaries of the event and temporarily close the streets within the boundaries. The city manager may impose on the entity seeking the permit reasonable requirements to ensure that the sale, distribution, service, possession or consumption of beer and wine does not extend beyond the boundaries of the function or celebration.

(f) In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 125. City Code Section 46-172 shall be amended to add the underlined language where noted below:

"Sec. 46-172. Massage of private parts for hire prohibited.

It shall be unlawful for any person to massage or to offer to massage the private parts of another for hire. The term "massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping, by hand or mechanical device. The term "private parts"

means the penis, scrotum, mons veneris, vulva or vaginal area. The provisions of this section shall not apply to licensed medical practitioners, osteopaths, chiropractors, or persons operating at their direction, in connection with the practice of medicine, chiropractic, or osteopathy. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 126. City Code Section 50-1 shall be amended to add the underlined language where noted below:

“Sec. 50-1. Loitering at bus terminal.

It shall be unlawful for any person not having tickets or business with the officials to loaf or loiter on the platform or premises of any bus terminal. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 127. City Code Section 50-22 shall be amended to add the underlined language where noted below:

“Sec. 50-22. Compliance with federal regulations and standards.

The establishment of any heliport or helistop and the operation and flight of helicopters within and above the corporate limits of the city shall at all times comply and be in conformity with at least the minimum of all pertinent regulations and standards promulgated from time to time by the Federal Aviation Administration and other applicable federal agencies, with particular reference to applicable federal air regulations, civil air regulations, and advisory circulars or successor publications. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 128. City Code Section 50-23 shall be amended to add the underlined language where noted below:

“Sec. 50-23. Minimum altitude for helicopter flight.

Except when necessary for take-off or landing, no person may operate a helicopter below the following altitudes:

- (1) *Generally.* An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface. In addition, each person operating a helicopter shall comply with the routes, altitudes and other directions and regulations specifically prescribed for helicopters by any rule or ordinance pertaining to the same. At no time shall a helicopter be below 500 feet without special permission granted by the city manager pursuant to authority and for cause described in section 50-29.
- (2) *Over congested areas.* Over any congested area of the city or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the helicopter.
- (3) *Over other than congested areas.* An altitude of 500 feet above the surface of open fields or areas upon which there are no trees, buildings or other obstacles; provided, however, the helicopter shall not be operated closer than 500 feet to any person, vehicle, vessel, tree, tower or structure.

In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 129. City Code Section 50-24 shall be amended to add the underlined language where noted below:

“Sec. 50-24. Permit to operate heliport or helistop—Required; application; issuance; terms and conditions.

(a) No heliport or helistop shall be established or used unless an application for the establishment of the same shall have first been filed in writing with and approved by the city council. Such application shall contain a description of the proposed location, dimensions, obstruction clearance planes, proximity and height of nearest buildings, trees, towers or other structures, characteristics of the immediate area of such heliport or helistop and such other information as the city council may require.

(b) If the city council finds and determines that the public safety and convenience will be preserved and a nuisance or other burdensome condition will not be created and that the public interest will not be adversely affected by the establishment and use a heliport or helistop at such site and under such conditions and that such use at such site will be in accord with pertinent zoning regulations, it may issue a permit for the establishment and use of such heliport and the operation of helicopters to and from the same. The city council may impose such terms and conditions in the issuance of such permit as it determines to be necessary in the promotion of the public safety, convenience, health and welfare.

(c) No heliport or helistop shall be established or used unless such permit therefor has been granted under the provisions hereof and the required insurance has been issued and is in effect as required in this article.

(d) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 130. City Code Section 50-29 shall be amended to add the underlined language where noted below:

“Sec. 50-29. Prohibited acts generally.

It shall be unlawful to operate a helicopter within or above the corporate limits of the city or to operate a heliport or helistop within such corporate limits:

- (1) In a negligent or reckless manner so as to endanger the lives or property of the operator or others.
- (2) When the operator of such helicopter is under the influence of intoxicating beverages, drugs, barbiturates or other stimuli or depressants.
- (3) In violation of any of the provisions set forth in section 50-23.
- (4) Unless there is then outstanding and in full force and effect a valid airworthiness certificate issued for such helicopter by the Federal Aviation Administration or other federal agency with appropriate authority to issue such certificate.
- (5) Unless the operator flying such helicopter shall then and there have a valid airman's certificate in full force and effect with the appropriate aeronautical ratings issued by

the Federal Aviation Administration or other federal agency with appropriate authority to issue such certificate.

- (6) To operate a heliport or helistop or a helicopter after the permit to do so has been revoked.
- (7) To operate a helicopter to or from any property or place within the city other than a heliport or helistop in such location, with such dimensions and obstructions clearance planes and such other safety provisions as comply with the federal air regulations and the terms and conditions set forth in the permit issued by the governing body of the city as hereinabove provided; provided, however, this provision may be varied by the city manager in emergencies in which helicopter operations at places other than at an approved heliport or helistop are necessary in connection with the immediate extending of help because of a disaster or civil disturbance or in performing an emergency errand of mercy or when the chief of police or sheriff of the county certifies to the city manager that the use of such helicopter in a special flight operation is urgent and immediately necessary in aiding law enforcement or where there exists a special and urgent necessity for the use of a helicopter at a place other than a heliport or helistop in the preservation of the public peace, health, safety and welfare; but in no case, emergency or otherwise, shall such helicopter be operated in violation of any federal air regulations or upon the property of any person except after having first obtained the permission and consent of such person owning or in control of such premises that the same may be so used.

In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 131. City Code Section 50-86 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

"Sec. 50-86. Penalties.

~~(a) It shall be unlawful for any person to violate any of the provisions of this article and violation of any provisions of this article shall constitute a misdemeanor and upon conviction shall be punished in accordance with section 1-9.~~

~~(ab)~~ Upon violation of any provision of this article, the administrator may make a finding, suspend or revoke any operating permit held by such person, and the administrator may suspend or revoke any driver's permit held by such person.

~~(be)~~ Any person or company who violates any provision of this article may also be subject to civil penalties up to as provided in subsection (g), but not exceeding \$500.00 per day that the person or company remains in violation of this article. This penalty may be recovered by the city, in a civil action in the nature of a debt, if the violator does not pay the penalty within 30 days from the date the violator is notified, in writing, of the penalty. ~~Those persons violating section 50-118, pertaining to operating a passenger vehicle for hire without a permit, shall be guilty of a misdemeanor and punished as provided in section 1-9.~~

~~(cd)~~ Progressive penalties may be applied when it is determined by the administrator that the same driver or operator has committed a second or subsequent violation of the same rule or any combination of the rules listed for the same progressive penalty schedule within any 12-month period. Assessment of penalties shall be made by the administrator and collected by the city pursuant to subsection (c) of this section. The progressive penalty schedule shall be posted in the office of the administrator.

(de) If the violator fails to pay or appeal the penalty within ten business days, the administrator may suspend or revoke the driver's and/or the operator's permit in addition to any other action taken pursuant to this section. Civil penalties may be levied against the passenger vehicle for hire company according to the total amount of civil penalties incurred during a calendar year by the passenger vehicle for hire drivers employed by that company.

(ef) In addition to the authority of this article to deny, suspend, or revoke a permit, the city may seek enforcement of this article by instituting a civil action for injunctive relief, abatement order, or any other appropriate relief in the General Court of Justice in Durham County.

(fg) Class I, II and III violations.

(1) *Class I violations.* Except as provided in this article, operating permit holders will not be responsible for Class I violations incurred by drivers. The administrator may assess a civil penalty of \$40.00 (doubled if not paid in 30 days) against the operating permit holder (owner), or a civil penalty of \$20.00 (doubled if not paid in 30 days) against the driver, who commits any of the following acts or failures to act, collectively referred to as Class I violations:

- a. Fails to pay sinking fund insurance fee in a timely manner and as a result insurance is cancelled.
- b. Fails to have passenger vehicle for hire inspected on scheduled inspection date and time.
- c. Fails to make repairs to passenger vehicle for hire in accordance with vehicle standards.
- d. Allows person to drive a passenger vehicle for hire without a valid passenger vehicle for hire driver's permit.
- e. Fails to provide administrator with notification of insurance renewal.
- f. Fails to have driver's permit card displayed in appropriate location.
- g. Fails to keep passenger vehicle for hire clean and sanitary.
- h. Fails to notify administrator of criminal offenses or infractions.
- i. Exceeds seating capacity of vehicle.
- j. Fails to maintain rate notice on inside of taxicab windshield.

(2) *Class II violations.* Except as provided in this article, operating permit holders will not be responsible for Class II violations incurred by drivers. The administrator may assess a civil penalty of \$25.00 (doubled if not paid in 30 days) against the operating permit holder (owner), or a civil penalty of \$10.00 (doubled if not paid in 30 days) against the driver, who commits any of the following acts or failures to act, collectively referred to as Class II violations:

- a. Fails to notify administrator of motor vehicle accident involving passenger vehicle for hire within 48 business hours of the accident.
- b. Drives with an expired driver's permit.
- c. Fails to adhere to dress and cleanliness standards.
- d. Smokes a cigarette, cigar, pipe or tobacco of any kind while a passenger is being transported.

(3) *Class III violations.*

- a. Any person who operates a passenger vehicle for hire in the city, without first obtaining an operating permit as provided in section 50-118, is subject to a civil

penalty. The civil penalty for a violation is \$100.00. Each day of a continuing violation shall constitute a separate violation.

- b. Any person who drives a passenger vehicle for hire in the city, without first obtaining a driver's permit as provided in section 50-154, is subject to a civil penalty. The civil penalty for a violation is \$100.00. Each day of a continuing violation shall constitute a separate violation."

Section 132. City Code Section 50-270 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

"Sec. 50-270. Violation of division; charging of excessive fare.

~~If it shall be unlawful for any person shall~~te violate any of the provisions of this division or and ~~shall also be unlawful for any person to charge or collect a fare in excess of that authorized by this division, and upon conviction, the offender shall be punished as provided in G.S. 14-4. In addition to such penalty,~~ the administrator shall summarily and immediately cause the vehicle involved in such violation to be removed from operation as a passenger vehicle for hire until the deficiencies found to be in violation of this division have been corrected. The charging or receiving of a fare in violation of the provisions of this division may be cause for suspension or revocation of the driver's permit."

Section 133. City Code Section 50-387 shall be amended to add the underlined language where noted below:

"Sec. 50-387. Solicitation of business.

No tow truck driver or tow truck operator, or any employee or agent of a tow truck operator, shall approach the person then in control of a vehicle involved in an accident for the purpose of soliciting or offering towing services, unless specifically directed or requested to do so by a police officer, a firefighter, the person then in control of the disabled vehicle, or by the owner of the disabled vehicle. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 134. City Code Section 50-388 shall be amended to add the underlined language where noted below:

"Sec. 50-388. Cleaning debris at accident scene.

The tow truck driver and the tow truck operator engaged in towing a disabled vehicle shall cleanup and remove from the street or highway any broken glass, vehicular parts, contents of a disabled vehicle, or other debris before leaving the scene of the accident, to the satisfaction of the police officer or firefighter at the accident scene. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 135. City Code Section 50-390 shall be amended to add the underlined language where noted below:

“Sec. 50-390. Reporting of towed vehicles.

Every tow truck operator engaging in the business of storing vehicles that have been towed from the public streets or highways, or from private property, shall, on or before 4:30 p.m. on Wednesday of each week, deliver to the police department a list, including make, model, year, registration plate number and vehicle identification number, of all vehicles then in the possession of such tow truck operator that have been unclaimed by the registered owner, or his or her agent, for a period exceeding 48 hours. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 136. City Code Section 50-391 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 50-391. Nonconsensual tow regulations.

(a) A tow truck operator on the city's rotation wrecker list, when responding to a police initiated request for towing services, shall not charge the owner of any vehicle towed without the consent of the owner an amount for towing and storage fees in excess of those fees prescribed in the schedule of police-initiated nonconsensual towing fees adopted by the city council.

Police-initiated nonconsensual tows include situations where the owner or operator is unable to consent such as in cases of: a severe accident, or as a result of the order of a police officer. Each tow truck operator on the city's rotation wrecker list shall post in a conspicuous place on the business premises and in any tow truck the permitted tow charges when conducting a police-initiated nonconsensual tow.

(b) Towing and storage fees for nonconsensual tows shall be payable by cash, debit card or credit card.

(c) In addition to any other remedy available in the Code, A-violation of this section 50-391 is ~~shall constitute a misdemeanor and upon conviction shall be punished as provided in section 1-9.~~

~~(b)—A violation of this section 50-391 shall also subject the offender to a civil penalty of \$200.00 for the first violation and \$400.00 for the second and each subsequent violation.”~~

Section 137. City Code Sec. 50-392. Penalties. is repealed.

Section 138. City Code Section 50-445 shall be amended to add the underlined language where noted below:

“Sec. 50-445. Culverts under tracks for drainage.

Railroad companies operating in the city shall maintain culverts of sufficient size for the ready flow and passage of surface water under their tracks, and such culverts shall be made, constructed, and maintained in such a manner as to prevent the backing of water upon adjacent property or streets. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 139. City Code Section 50-446 shall be amended to add the underlined language where noted below:

“Sec. 50-446. Bumper posts.

All railroads operating in the city shall maintain proper bumper posts at the termination of all tracks inside the corporate limits where the tracks end or terminate at or near any street crossing such tracks. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 140. City Code Section 50-447 shall be amended to add the underlined language where noted below:

“Sec. 50-447. Trains delaying traffic.

It shall be unlawful for any railroad company or any agent or employee thereof to stop or permit any train, car or locomotive to be stopped across any of the streets so as to hinder or delay the free passage of vehicles for a longer time than five consecutive minutes, or for any such railroad company or agent or representative or employee thereof to stop or permit any train, car or locomotive to remain stopped so close to an intersecting street as to cause the light or bell signals at such crossing to light or ring for a longer time than five consecutive minutes. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 141. City Code Section 50-448 shall be amended to add the underlined language where noted below:

“Sec. 50-448. Firefighting personnel and vehicles to have right-of-way.

It shall be the duty of all railroad companies and the engineers and employees of the same, when any engine, car or train of cars are across or on any street, upon the approach of fire apparatus, to disconnect or move such cars or train and clear the street crossing immediately and allow the firefighting personnel and vehicles to pass without any delay. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 142. City Code Section 50-449 shall be amended to add the underlined language where noted below:

“Sec. 50-449. Operation of loose cars over crossings.

It shall be unlawful for any person operating, owning or maintaining a railroad in the city to knock, push or shove any car, that is, to operate what is known as a "flying switch," on its tracks where such track crosses any street in the city or to allow any loose car not attached to an engine and controlled by an engineer to run on its tracks where such tracks cross at a surface grade any of the streets in the city. This section shall not apply to cars being pushed by a lever by employees of railroad companies for the purpose of placing cars more conveniently for loading or unloading. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 143. City Code Section 50-450 shall be amended to add the underlined language where noted below:

“Sec. 50-450. Electric flashing lights, bells, etc., at certain crossings.

(a) All railroad companies operating on tracks which cross Duke Street, Buchanan Avenue, Grant Street, Trent Drive, Pettigrew Street, Dillard Street, LaSalle Street, and Corcoran Street at grade in the city, are hereby required and directed to install, equip, maintain and operate electric flashing light signals on both sides and bells on one side of each of the above-named crossings. At the crossings of Duke Street, Buchanan Avenue, Grant Street, Elm Street, Trent Drive, Dillard Street, Pettigrew Street and Corcoran Street, the flashing light signals and bells to be installed shall be operated automatically.

(b) Automatic operation of flashing light signals and bells on tracks other than main tracks shall be limited to such time as the crossing area of such tracks is occupied by an engine or cars.

(c) At Duke Street and Buchanan Avenue, engines and cars approaching crossings on tracks other than main tracks shall proceed over the crossing only after the crossing has been flagged by a member of the train or engine crew and a hand signal has been received by the engine man from the flagman.

(d) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 144. City Code Section 50-451 shall be amended to add the underlined language where noted below:

“Sec. 50-451. Gates at certain crossings—Generally.

All railroad companies operating on tracks crossing Morgan Street, West Main Street and East Main Street at grade shall keep and maintain gates at each of the crossings and on both sides of each of the crossings, and during the hours of 6:00 a.m. to 10:30 p.m. such gates shall be closed on both sides of each of the crossings when any train, railroad car, or locomotive is approaching such streets to cross the same. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 145. City Code Section 50-453 shall be amended to add the underlined language where noted below:

“Sec. 50-453. Same—Red lights.

During darkness suitable red lights shall be attached to the gates at railroad crossings. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 146. City Code Section 50-455 shall be amended to add the underlined language where noted below:

“Sec. 50-455. Brakeman to precede train at certain crossings.

It shall be unlawful for any person to operate or cause to be operated a train, locomotive or car upon railroad tracks across Blacknall Street, Vivian Street or Pettigrew Street over the area not protected by gates, unless such train, locomotive or car be preceded by a brakeman or other person on foot, who shall give warning by such audible or visible means as shall be

sufficient to adequately warn pedestrians and operators of vehicles using such streets of the approach of such locomotive, train or car. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 147. City Code Section 50-456 shall be amended to add the underlined language where noted below:

“Sec. 50-456. Clearance indicators at underpasses—Signs required; maintenance.

(a) Each railroad company operating over tracks located upon and across any underpass situated within the city shall install, upon each street side of each underpass structure over which it operates, a sign to be located over the center of such street upon which shall be painted the height-clearance dimensions of such underpass structure. Such sign shall be painted with black letters upon a white background and shall be of such size as will be clearly visible for a distance of at least 100 feet from the approach side of such structure.

(b) After installing the signs as required in subsection (a) of this section each railroad company shall keep and maintain such signs in such condition as to be clearly discernible and visible in both the daytime and nighttime at least 100 feet away by persons operating motor vehicles upon the streets and approaching the underpass in question.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 148. City Code Section 50-457 shall be amended to add the underlined language where noted below:

“Sec. 50-457. Same—Patterns of glass reflectors on structure required.

In addition to the sign as required in section 50-456(a), a railroad company operating over tracks located upon and across any underpass situated in the city shall attach on each street-approach side of such structure a pattern of reflector glass buttons spelling out the clearance dimensions, which pattern shall be located on such structure at such point above the surface of the street as will reflect at night the lights of approaching vehicles and give proper notice to on-coming vehicles of the clearance of such underpass. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 149. City Code Section 50-458 shall be amended to add the underlined language where noted below:

“Sec. 50-458. Same—Use of underpass by more than one railroad company.

Only one complete set of signs and signals as described in sections 50-456 and 50-457 shall be required on each street approach side of an underpass, notwithstanding the fact that such underpass may be used by more than one railroad company. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 150. City Code Sec. 50-459. Same—Penalty. is repealed.

Section 151. City Code Sec. 50-460. Penalty for violation of chapter generally. is repealed.

Section 152. City Code Section 50-463 shall be amended to add the underlined language where noted below:

“Sec. 50-463. Authorization.

Unlawful to operate SATS without authorization. It is unlawful for any person to conduct a shared active transportation system within the city except pursuant to this article. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 153. City Code Section 50-464 shall be amended to add the underlined language where noted below:

“Sec. 50-464. Permits required; issuance; authority of director; nature of permits.

(a) No person may conduct a SATS in the city who does not hold a valid permit. A permit will be issued if the department finds that the application meets the requirements of this article for issuance of the permit, including payment of applicable fees, which shall be set from time to time by city council. Permits will be effective for a period of one year and are renewable subject to the same standards of review as for the initial permit.

(b) The director is authorized to limit the total citywide number of shared devices, including the mix of shared devices, within device operating areas and to write terms and conditions in individual permits as appropriate to effectuate this article, including adjusting the mix of shared devices and fleet size of a permittee in order to:

- (1) Maintain the integrity of the city's entire transportation system;
- (2) Keep rights-of-way free and clear of unnecessary obstructions; and
- (3) Protect the health, safety, and welfare of the citizens of the city.

(c) A permit does not grant exclusive rights to operate a shared active transportation system in device operating areas.

(d) Each permittee shall comply with its permit.

(e) In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 154. City Code Section 50-465 shall be amended to add the underlined language where noted below:

“Sec. 50-465. Shared device equipment and requirements.

(a) Permittees shall provide, on every shared device, contact information of the permittee including the website and phone number.

(b) All shared devices must be equipped with technology, such as GPS, that allows the shared device to be located and tracked by the permittee at all times.

(c) Permittees shall see that every shared device prominently displays a unique and easily read serial number or other identifier.

(d) In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 155. City Code Section 50-466 shall be amended to add the underlined language where noted below:

"Sec. 50-466. Operation of SATS.

(a) A permit is valid for conducting a SATS within device operating areas only, and with the consent of the owner or lawful occupant on other real property. It is unlawful to operate a shared device on any real property outside device operating areas without consent of the property's owner or lawful occupant. Each permittee shall have at all times the ability to discover when its shared devices are operated outside device operating areas and to communicate electronically that information to customers who have operated a shared device outside device operating areas. Permittees shall communicate to customers when, at the end of operating a trip, that the shared device has been operated outside device operating areas.

(b) Permittees shall not restrict the operation of shared devices to only certain geographical areas of the city unless approved by the city.

(c) Permittees shall not discriminate against low and moderate income persons in connection with permitted activities and conducting its SATS in the city. Permittees must deploy and maintain a sufficient number of shared devices to satisfy customer demand within census tracts of low and moderate income areas of the city as defined in the permit.

(d) Each permittee shall implement programs to reduce barriers to low-income persons to rent its shared devices by providing diverse payment options, including options for persons with neither a smart phone nor a credit card to rent its shared device. These options shall be made accessible to low-income persons at multiple locations within the permittee's area of operation.

(e) In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 156. City Code Section 50-467 shall be amended to add the underlined language where noted below:

"Sec. 50-467. Permittee communication with customers.

(a) Permittees shall include substantially the following information for prospective customers on the permittee's mobile app and web site, and also displayed on the shared device for which the information is applicable:

(1) Persons operating bicycles and electric assisted bicycles are encouraged to wear helmets.

(2) Persons operating motorized scooters must be at least 16 years old and wear a helmet.

(3) NC law requires persons operating the device to follow applicable traffic laws.

(4) City ordinance prohibits operating the device on sidewalks except for parking the vehicle.

(5) Operating electric assisted bicycles and motorized scooters is prohibited on shared-use paths.

(b) Permittees shall adopt and implement programs to educate customers on how to safely operate shared devices, including knowledge of laws applicable to operating a shared device in the city.

(c) Permittees shall communicate to prospective customers sufficient information on charges that may be made, including rates and dollar amounts of fees, including rental charges, minimum charges, maximum charges, charges for additional time, and charges for overage periods. If charges may be based on time or distance, information on the rate per minute, hour, mile, or other applicable time period or distance shall also be provided. Permittees shall communicate to customers diverse payment options and alternatives that neither require a smart phone nor a credit card to rent its shared device.

(d) Permittees shall have a 24-hour phone number and support email address for customers to report safety concerns and complaints, and to ask questions.

(e) Permittee shall communicate to its customers how and where to park a shared device in a manner required by this article, including the prohibited parking locations listed under City Code subsection 66-310(f).

(f) All communications required by this article to be made by a permittee to prospective customers and customers shall be in clear, plain English and displayed in a sufficiently prominent way that the communication is obvious.

(g) In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 157. City Code Section 50-468 shall be amended to add the underlined language where noted below:

"Sec. 50-468. Insurance, indemnification, security, and liability.

(a) At all times when conducting a SATS, a permittee shall maintain insurance in effect and provide proof of such insurance, both as required by the department. In addition to any other remedy available in the Code, violation of this subsection (a) is a misdemeanor punishable by a maximum fine of \$500.00.

(b) Every permittee shall defend and indemnify the city from and against all claims and liabilities that arise from the acts and omissions of the permittee and its customers in device operating areas, to the extent the acts and omissions relate to the operation of shared devices.

(c) Permittees shall provide the city with a performance bond, or other security acceptable to the director, in an amount determined by the director to be sufficient to cover the obligations of the permittee under the permit. The form of the bond is subject to approval by the department after it consults the city attorney, and shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina. The bond shall guarantee the performance of all the obligations of the permittee under its permit. If the amount of the bond is set according to the number of deployed shared devices, when a permittee intends to increase the number of deployed devices, the permittee shall submit a revised performance bond, or other security acceptable to the director, before the additional shared devices may be deployed.

(d) Each permittee shall be responsible for the costs of repair to public property damaged by its customers' use of its shared devices."

Section 158. City Code Section 50-469 shall be amended to add the underlined language where noted below:

"Sec. 50-469. Parking, placement, rebalancing, and removing of shared devices.

(a) Shared devices shall not be parked in a way that may impede the regular flow of vehicular and pedestrian travel in device operating areas or otherwise cause a violation of the City Code, including this article. The permittee shall remove or re-park every one of its shared devices that is parked in violation of the permit or the City Code in accordance with the following:

- (1) During the time period of 6:00 a.m. to 6:00 p.m. on weekdays, not including legal holidays, the permittee shall remove or re-park within two hours of receiving notice from any person or by the department via mobile or other web application, email, or phone number.
- (2) During all other times, the permittee shall remove or re-park within 12 hours of receiving notice from any person or by the department via mobile or other web application, email or phone number.

(b) At any time the city may make it unlawful to park shared devices in specific locations or portions of device operating areas or public property by action of the city council or as provided in division 2 (powers and duties of city manager) of article II of chapter 66 (traffic and parking) of the City Code.

(c) Permittees shall remove every bicycle and electric assisted bicycle before it is parked in the same location for more than seven consecutive days.

(d) Permittees shall remove every motorized scooter before it is parked in the same location for more than 72 consecutive hours.

(e) Permittees shall not deploy a shared device that is inoperable or unsafe to operate. Permittees shall remove from device operating areas within 24 hours of notice any inoperable shared device, any shared device that is not safe to operate, or any shared device unavailable to rent by the permittee.

(f) Each permittee shall remove and secure its entire fleet of shared devices from device operating areas for all time periods for which the National Weather Service or its successor agency forecasts:

- (1) Sustained winds of 40 mph or higher for one hour or more, or
- (2) Wind gusts of 58 mph or higher for any duration in the city.

(g) Each permittee shall compensate the city for the costs incurred by the city in removing and storing its shared devices that have been improperly parked or rebalanced, including under the circumstances where a permittee fails to remove its shared devices in violation of its permit or in case its permit is terminated or otherwise not in effect.

(h) Permittees shall provide the department with contact information so that it can order rebalancing. The city has the right to determine specific locations for rebalancing shared devices, as well as times when the shared devices must be removed from device operating areas.

(i) If the city relocates or removes a permittee's shared devices because of a violation of a permit or this article, the permittee shall pay a fee in an amount set from time to time by city council.

(j) In addition to any other remedy available in the Code, violation of any provision of this section related to the removal or rebalancing of shared devices is a misdemeanor punishable by a maximum fine of \$500.00."

Section 159. City Code Section 50-470 shall be amended to add the underlined language where noted below:

"Sec. 50-470. Reporting.

(a) Each permittee shall provide the city, or to such other persons that the city may specify, with data regarding customers and shared device trips, in the format and timeline specified by the director. The data shall include real-time availability data for all devices, archival trip data for all devices including the frequency and location of shared device trips during the permit period, including identification of the shared device by type. This data will be used to support safe, equitable, and effective management of the shared active transportation system throughout the city. The permittee shall communicate to prospective customers that this data will be collected and shared with the city.

(b) Each permittee shall compile, for all of its shared devices deployed in the city, records of collisions or accidents reported to the permittee, the police, or the NC Department of Motor Vehicles, and records of maintenance and repair. Records shall be shared with the city when and in the manner required by the permit.

(c) In addition to any other remedy available in the Code, violation of any provision of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 160. City Code Section 50-472 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

"Sec. 50-472. Penalties for violations.

(a) *Assessment of civil penalties.* The director shall assess civil penalties for violation of this article, including the terms of a permit. The director shall give the offender written notice of the nature of the violation and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the director. The civil penalty shall be \$200.00 per violation plus the costs incurred by the city resulting from the violation, including costs of removing shared devices from the right-of-way.

(b) *Review of assessment of civil penalties.* Any person who has been assessed a civil penalty under this article may have that assessment reviewed by filing a written request in the office of the director within ten days of the date of service of the notice of the civil penalty. A person designated by the city manager for this purpose who is neither the person who assessed the civil penalty nor that person's subordinate shall be named as the hearing officer to conduct a hearing in order to review the assessment. The director shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The person assessed the penalty and the director may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the

hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request review within the time and in the manner provided for in this subsection constitutes a waiver of the right of review.

(c) *Collection of civil penalties.* If the offender does not pay the civil penalty within ten days after having been served with the notice of the civil penalty, the director may collect the civil penalties by causing to be commenced civil actions in the nature of debt. The director may compromise such claims, before or after commencement of the civil action, if the director finds there is a reasonable probability that the city will be unable to collect the entire amount of the claim, that the amount offered in compromise of the claim reasonably reflects either the amount of money available from the offender or the amount the city is likely to recover in the civil action, taking into account the resources required to pursue the civil action, and that the facts and circumstances of the events giving rise to the claim, taken as a whole, indicate that the amount offered in compromise is fair and reasonable. Using the foregoing standards, in an appropriate case, the director may abandon a claim.

~~(d) *Criminal remedies.* Except for provisions, if any, of this article that regulate the operation of shared devices, each violation of this article, including the terms of a permit, is a misdemeanor punishable by a maximum fine of \$500.00.~~

(de) *Available remedies.* This article and the provisions of permits issued under this article may be enforced by an appropriate equitable remedy, including abatement orders and mandatory or prohibitory injunctions, issuing from a court of competent jurisdiction. The general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law. In applying City Code subsection 1-9(e), the city council intends that revocation of a permit be deemed to be a remedy among other authorized remedies.”

Section 161. City Code Section 54-1 shall be amended to add the underlined language where noted below:

“Sec. 54-1. Curb service.

It shall be unlawful for any person to engage or take part in what is commonly known as curb service, that is, the delivery by a merchant or his or her agent, to the occupant or person in charge of a motor vehicle, of food or drinks for consumption by the occupant of such vehicle while the vehicle is parked on a street; provided, nothing herein contained shall be construed to prohibit merchants from serving drinks in containers or receptacles to be returned to such merchant. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 162. City Code Section 54-3 shall be amended to add the underlined language where noted below:

“Sec. 54-3. Poolrooms, billiard parlors and other places of amusement.

(a) It shall be unlawful for any proprietor, manager or owner of a billiard parlor, poolroom, skating rink, shooting gallery or other similar place or device of amusement to allow, suffer or permit the use of any of such tables, rinks, galleries or other similar devices, either for hire or gratis between the hours of 2:00 a.m. and 7:00 a.m. from the last Sunday of April of each year until the last Sunday of October of each year and between the hours of 1:00 a.m. and 7:00 a.m.

at all other times; provided, however, this section shall not make unlawful the use of pool or billiard tables in private homes or private clubs and lodges which are not engaged in the business of operating such devices for hire. Provided, however, that the proprietor, manager or owner of a place of amusement regulated pursuant to this section may, with written permission of the city manager, and in accordance with rules and regulations adopted by the city manager and approved by the city council, allow a limited number of patrons to remain in the establishment after closing, to operate the electronic games therein for the purpose of establishing or attempting to establish, a record number of points or a record number of continuous playing hours on a given game or electronic machine.

(b) It shall be unlawful for any person to establish, conduct, maintain or operate, or to assist in the conduct, maintenance or operation of any public poolroom or billiard parlor in any portion of any building or structure within the corporate limits of the city, except upon the ground floor thereof.

(c) It shall be unlawful for any person who owns, operates or conducts a public poolroom or billiard parlor, to have or maintain or use partitions, screens, painted or stained windows or doors, or any other materials, fabric, device, enclosure or obstructions which prohibit the clear or unobstructed view from the street into the entire interior of such public poolroom or billiard parlor in which the business herein referred to is being carried on.

(d) In addition to any other remedy available in the Code, violation of any provision of this section may subject the offender to a civil penalty assessed and collected in accordance with the provisions set forth in Sec. 54-188(a) through (c)."

Section 163. City Code Section 54-84 shall be amended to add the underlined language where noted below:

"Sec. 54-84. Interacting with or impeding traffic on roadways.

(a) Prohibitions.

- (1) No individual in a solicitation-restricted right-of-way shall stop or attempt to stop any motor vehicle that is on the roadway located within that right-of-way for the purpose of soliciting employment, business, or contributions from any occupant of the motor vehicle, or for the purpose of providing any service to the motor vehicle or any of its occupants.
- (2) No individual in a solicitation-restricted right-of-way shall deliver, or, by means of a sign or other device of any kind, or by means of speech, sounds, signals, or motions offer to deliver, any tangible thing to any occupant, of a motor vehicle that is on the roadway located within that right-of-way.
- (3) No individual in a solicitation-restricted right-of-way shall, by means of a sign or other device of any kind, or by means of speech, sounds, signals, or motions, request any occupant of a motor vehicle that is on the roadway located within that right-of-way to deliver any tangible thing to the individual, unless the individual specifies by a sign that can be read from a distance of 30 feet that the tangible thing is to be delivered to the individual or another person only when the motor vehicle is off the street right-of-way.
- (4) Unless he or she is on a paved sidewalk, no individual in a solicitation-restricted right-of-way shall, by means of a sign or other device of any kind, or by means of signals or motions, attempt to alert any occupant of a motor vehicle that is on the roadway located within that right-of-way to any commercial activity.

(b) Exceptions. Subsection (a) does not prohibit an individual aged 16 or more years from doing the following:

- (1) Stopping or attempting to stop a motor vehicle on a roadway, for the purpose of soliciting employment, business, or contributions, when
 - a. The vehicle is in one of the following locations:
 1. On a street with two-way travel, and the vehicle is located in the travel lane that is rightmost from the driver's viewpoint;
 2. On a one-way street with two or more travel lanes, and the vehicle is located in the travel lane that is rightmost or leftmost from the driver's viewpoint; or
 3. On a street with only one travel lane, and the vehicle is located in the travel lane;
 - b. The vehicle is approaching a traffic signal or sign that requires the vehicle to come to a complete stop; and
 - c. The individual is on a paved sidewalk.

The individual does not violate subsection (b)(1)b. when, for example, the vehicle is approaching a stop sign or a steady, flashing, or strobe beam light emitting red light, and the individual is in violation of subsection (b)(1)b. if the vehicle is approaching a yield sign, or a steady, flashing, or strobe beam light emitting yellow or green light.

- (2) Delivering or offering to deliver a tangible thing to an occupant of a motor vehicle on a roadway when
 - a. The vehicle is in one of the following locations:
 1. On a street with two-way travel, and the vehicle is located in the travel lane that is rightmost from the driver's viewpoint;
 2. On a one-way street with two or more travel lanes, and the vehicle is located in the travel lane that is rightmost or leftmost from the driver's viewpoint; or
 3. On a street with only one travel lane, and the vehicle is located in the travel lane;
 - b. The driver of the vehicle is, while the delivery or offer to deliver is occurring, complying with either a traffic signal that requires the vehicle to come to a complete stop and the traffic signal has not changed to allow the vehicle to proceed, or a stop sign; and
 - c. The individual is on the side of the vehicle that is closest to the edge of the roadway.
- (3) Receiving a tangible thing from an occupant of a motor vehicle on a roadway when:
 - a. The vehicle is in one of the following locations:
 1. On a street with two-way travel, and the vehicle is located in the travel lane that is rightmost from the driver's viewpoint;
 2. On a one-way street with two or more travel lanes, and the vehicle is located in the travel lane that is rightmost or leftmost from the driver's viewpoint; or

3. On a street with only one travel lane, and the vehicle is located in the travel lane;
- b. The driver of the vehicle is, while the individual is receiving the tangible thing from the occupant, complying with either a traffic signal that requires the vehicle to come to a complete stop and the traffic signal has not changed to allow the vehicle to proceed, or a stop sign; and
- c. The individual is on the side of the vehicle that is closest to the edge of the roadway.

The individual does not violate subsections (b)(1)a.1., (b)(2)a.1., or (b)(3)a.1. when, for example, on a street with two northbound lanes and two southbound travel lanes, the vehicle is in either the rightmost northbound lane or the rightmost southbound lane.

(c) An individual acting pursuant to subsection (b) shall not:

- (1) *First Amendment protected goods.* Sell any goods besides First Amendment protected goods. First Amendment protected goods include newspapers and magazines.
- (2) *Roadway.* Stand, sit, or walk on a roadway, provided that this subsection does not prohibit an individual from standing and walking on the roadway during the time needed:
 - a. To travel to or from a motor vehicle whose occupant has signaled the individual to approach, and
 - b. To engage in transactions allowed by subsections (b)(2) and (b)(3).
- (3) *Median.* Violate section 66-12 (standing, sitting, and walking on median generally prohibited).
- (4) *Animals.*
 - a. Be accompanied by an animal, provided that an individual with a disability may be accompanied by a service animal trained to assist the individual with the individual's specific disability, upon a showing of a tag, issued by the state department of health and human services, under G.S. 168-4.3, stamped "NORTH CAROLINA SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the animal is being trained or has been trained as a service animal. An animal in training to become a service animal may accompany the individual for the purpose of training only when the animal is accompanied by a person who is training the service animal and the animal wears a collar and leash, harness, or cape that identifies the animal as a service animal in training.
 - b. Without limiting subsection (c)(4)a., an individual with a disability may be accompanied by a dog when:
 1. The individual states that the dog is required because of the individual's disability, and the individual describes work or tasks the dog has been trained to perform, or
 2. It is readily apparent that the dog is trained to do work or perform tasks for an individual with a disability.

The crime deterrent effects of a dog's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this subsection.

- (5) *Daylight.* Be in the solicitation-restricted right-of-way between 20 minutes before sunset and 20 minutes after sunrise. For purposes of this subsection, there is a rebuttable presumption that the United States Naval Observatory's times, as provided by the astronomical applications department or its successor division or department within the naval observatory, for sunset and sunrise are correct.
- (6) *Reserved.*
- (7) *Reflective outerwear.* Fail to wear class II or class III ANSI 107-2004 outerwear:
 - a. That is reasonably clean and in good repair, and
 - b. On which the total area covered by all things (except for clear plastic that does not affect the reflectiveness of the outwear) resting on or attached to it is less than a total of four square inches.
- (8) *Signs in general.* Display a sign larger than two feet in any dimension, or display anything with illuminated, animated, blinking, chasing, flashing, or moving effects that can be seen by a person with 20-20 vision from a distance of four feet.
- (9) *Signs in violation of UDO.* Display a sign or other device in the solicitation-restricted right-of-way that is in violation of the UDO.
- (10) *Reserved.*
- (11) *Safe passage of pedestrians.* Interfere with the quick and safe passage across the roadway of pedestrians.
- (12) *Normal movement of pedestrians.* Impede the normal movement of pedestrians.
- (13) *Littering and traffic laws.* Violate any litter or traffic safety laws, including G.S. 14-399, G.S. 20-174.1, and G.S. 20-175.
- (14) *Removal of goods.* Fail to remove all goods in connection with soliciting from the solicitation-restricted right-of-way when the individual is more than 50 feet away from any such item. The phrase "goods used in connection with soliciting" means goods that the individual offered for sale or delivery to occupants of motor vehicles; structures, devices, things, and materials of any kind used to transport, protect, display, advertise, offer, or sell any goods; food brought for consumption by the individual; food partly consumed by the individual; and packaging for food or drink consumed in whole or in part by the individual or an animal accompanying the individual.
- (15) *Work zones.* Be in a work zone or stop or attempt to stop a motor vehicle that is in a work zone. A "work zone" is the area between the first sign that informs motorists or drivers of the existence of a work zone, construction zone, maintenance zone, utility work zone, or similar warning on a street and the last sign that informs motorists or drivers of the end of the zone, regardless of whether a sign states the penalty for speeding in the zone. Work zones are designated as such if the secretary of the state department of transportation or the city manager determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition; or if the posting is done at the direction of or with the consent of a governmental body or official having jurisdiction. The direction or consent may be given by any appropriate manner, including incorporation into specifications of a

contract. There shall be a rebuttable presumption that any posting of a work zone has been done with the consent of a governmental body or official having jurisdiction.

(16) *Access ramps.* Be on an access ramp.

(17) *Bridges.* Be on a bridge, or on the portion of a street leading to or from a bridge that is within 100 feet of the bridge. In this subsection, "bridge" is limited to a bridge that contains a roadway.

(d) Litter. Any goods, structures, devices, things, and materials not removed in accordance with subsection (a)(14) shall be considered litter pursuant to section 26-123. Nothing in this section is intended to limit the effect of chapter 26.

(e) Penalties. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00."

Section 164. City Code Section 54-88 shall be amended to add the underlined language where noted below:

"Sec. 54-88. Prohibition on use of sales vehicle and sales gear to sell on street right-of-way; vending machines.

(a) Except to the extent authorized by this article (including section 54-91) or by provisions that are authorized by this article to be placed in a permit, no person shall engage in right-of-way sales activities, as defined in section 54-26.

(b) This section does not prohibit right-of-way sales activities on the portion of a street that is closed or blocked.

(c) This section does not prohibit or otherwise affect an automatic vending machine on a sidewalk that sells only printed matter if the machine does not impede lawful travel on the sidewalk. To qualify under this exception, the vending machine must also be placed so as to allow at least four feet of unobstructed space for pedestrians. If applicable law, including Americans with Disability Act regulations, requires a greater distance, the greater distance applies. Without limiting the preceding two sentences, if within 200 feet of the vending machine, there is no passing space for pedestrians that is at least five feet by five feet, the vending machine must be placed so as to allow at least five feet of unobstructed space for pedestrians.

(d) Compliance with this article does not excuse or exempt any person from compliance with other applicable laws.

(e) In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 165. City Code Section 54-91 shall be amended to add the underlined language where noted below:

"Sec. 54-91. Right-of-way sales activities.

(a) *Exemption from subsection 54-88(a).* Right-of-way sales activities done in compliance with this section are exempt from subsection 54-88(a), provided, however, that to qualify for this exemption, the only goods that may be offered for sale or sold are (i) food and (ii) newspapers and other material the sale of which is protected by the First Amendment to the U.S.

Constitution through the application of the 14th Amendment to the U.S. Constitution. The provisions of this section apply to only persons claiming an exemption from subsection 54-88(a).

(b) *Location on street right-of-way; use of parking and loading spaces.* No person shall allow sales gear to be placed on any street right-of-way other than paved sidewalk, core downtown park, or paved on-street parking space. No sales gear other than a motor vehicle shall be placed on an on-street parking space. Such vehicles shall comply with ordinances that apply to occupying such spaces, including parking ordinances limiting the time that a parking space may be occupied. The sales gear for one sales vehicle shall not be placed in more than one on-street parking space. No sales gear shall be placed in loading zones.

(c) *Use of property of others.* No sales gear in the street right-of-way shall rest on or be attached directly or indirectly to public or private property unless the seller or salesperson has permission of the property's owner or other person who has authority to grant permission. This subsection does not prohibit resting sales gear on curbs that are less than eight inches high and on surfaces on which driving motor vehicles or walking (other than steps) is allowed.

(d) *Seating, tables, etc.* Sales gear shall not include seating for customers. Tables are allowed as sales gear only when a wheeled cart or motor vehicle is also part of the sales gear. Sales gear shall not include tables or other surfaces that are used by customers to consume or use purchases from sellers. Sales gear may include a maximum of one seat for each salesperson. Sellers and salespersons shall not allow customers to use those seats, and customers shall not use those seats. No sales gear may be placed in a manner that prohibits a motor vehicle from safely using a public or private driveway to gain access to and from a street.

(e) *Minimum distances.* No sales gear may be placed in a manner that prohibits a motor vehicle from safely using a public or private driveway to gain access to and from a street. All sales gear must be placed so as to allow at least four feet of unobstructed space for pedestrians on sidewalks, on pedestrian paths, and on other locations intended primarily for pedestrian travel. If applicable law, including Americans with Disability Act regulations, requires a greater distance, the greater distance applies. Without limiting the preceding two sentences, if within 200 feet of sales gear, there is no passing space for pedestrians that is at least five feet by five feet, sales gear must be placed so as to allow at least five feet of unobstructed space for pedestrians. All sales gear must be at least ten feet from street intersections, crosswalks, bus shelters, taxi stands, building entrances and exits, fire stations, police stations, and fire hydrants. All sales gear of one seller must be at least ten feet from all sales gear of all other sellers operating under this division, except that this sentence does not require a minimum distance between one motor vehicle parked in an on-street parking space and another motor vehicle parked in an on-space parking space. A street intersection is the point at which the edge of one street's roadway meets the edge of another street's roadway. All sales gear must be at least 20 feet from any automated teller machine and from all entrance doors and exit doors of banks, credit unions, and savings and loan associations. All sales gear must be outside of each area that is described as follows:

Beginning at the post on which a bus stop sign is attached, and running against the direction of traffic, along the edge of pavement a distance of 40 feet to a point; from that point, on the line that is perpendicular to the roadway, a distance of ten feet from the roadway; from that point, running with the direction of traffic parallel with the edge of pavement a distance of 40 feet; from that point, on the line that is perpendicular to the roadway, a distance of ten feet to the post on which the bus stop sign is attached, the point of beginning.

(f) *Distance from restaurants.*

- (1) This subsection (1) applies to restaurants neither holding a permit issued pursuant to section 54-110 nor lawfully providing one or more tables at which its customers may eat while seated outside on private property. Sellers that sell food must not, within 50 feet of the principal entrance for customers of a restaurant, without permission of the operator of the restaurant, (i) stop, stand, or park a sales vehicle, or (ii) engage in any right-of-way sales activity with a customer of the seller, such as selling goods or accepting payment. If there can be disagreement as to the location of the principal entrance of a restaurant, the city manager will determine which restaurant entrance is its principal one, and that determination is binding.
- (2) This subsection (2) applies to a restaurant that (i) holds a permit issued pursuant to section 54-110, and pursuant to and in compliance with the permit the restaurant has placed one or more tables in an outdoor dining area, at which tables the restaurant's customers may be seated in order to dine; or (ii) lawfully provides one or more tables at which its customers may eat while seated outside on private property. Sellers that sell or offer to sell food must not, within the greater of 50 feet from any edge of any such table or 50 feet from the principal entrance for customers of the restaurant, without permission of the operator of the restaurant, (i) stop, stand, or park a sales vehicle, or (ii) engage in any right-of-way sales activity with a customer of the seller, such as selling goods or accepting payment. If there can be disagreement as to the location of the principal entrance of a restaurant, the city manager will determine which restaurant entrance is its principal one, and that determination is binding.
- (3) For restaurants to which subsection (1) applies, this subsection (f) applies to the restaurant only while (i) the restaurant is allowing additional customers to enter its principal entrance for the purpose of ordering food prepared by the restaurant to eat while seated inside the restaurant, and (ii) the restaurant's kitchen is open and staffed for the purpose of preparing food for customers to eat while seated inside the restaurant. For restaurants to which subsection (2) applies, this subsection (f) applies to the restaurant only while (i) the restaurant is allowing additional customers to enter its principal entrance for the purpose of ordering food prepared by the restaurant to eat while seated inside the restaurant, while seated at a table in an outdoor dining area permitted pursuant to section 54-110, or while seated at a table outdoors on private property, and (ii) the restaurant's kitchen is open and staffed for the purpose of preparing food for customers to eat while seated inside the restaurant, while seated in an outdoor dining area permitted pursuant to section 54-110, or while seated at a table outdoors on private property.
- (4) For purposes of this subsection (f) but not for other portions of this article:

A building is a structure with walls and a roof. When it was erected, the building must have been designed and constructed to be usable for at least ten years, although it need not have been designed and constructed as a restaurant.

Inside and *outside* refer to locations inside or outside a building.

Outdoor dining area is defined in section 54-26, if a definition is provided there. If no definition is provided there, the expression means an area on a public sidewalk, public alley or pedestrian way whereon tables, chairs, benches, and other furnishings are placed for dining purposes.

Pedestrian way is defined in section 54-26, if a definition is provided there. If no definition is provided there, the expression means an improved walk or passageway

on public property or right-of-way intended for use by pedestrians, but not adjacent to any city street.

Private property is land that is not a public sidewalk, public alley, or a pedestrian way.

A *restaurant* is an establishment engaged in the business of preparing and serving meals at retail for pay. It must have a kitchen and inside seating for at least ten individuals to eat food provided by the restaurant. The following are not included in determining seating capacity: (1) seats in a bar or lounge area; (2) seats in a separate room or section used exclusively for private functions; and (3) outside seats. This definition of restaurant applies to this subsection instead of any other definition of the word elsewhere in the City Code.

(g) *Garbage and recycling; litter.* Sellers and salespersons shall provide, on or within 15 feet of all sales vehicles, containers of sufficient size and number for the disposal of garbage and recyclables resulting from the sales. They shall be conspicuously identified as being available for the disposal of garbage or recyclables. At least once per hour of operation, and between ten and 30 minutes after the last sale, excluding mere offers to sell, of the day, sellers and salespersons shall remove all litter (that is not in an appropriate container) resulting from the sales that has accumulated on, or within 15 feet of, sales vehicles. In complying with the preceding sentences of this subsection, city-provided containers shall not be used. Nothing herein is intended to limit the effect of City Code chapter 10 (garbage, other solid waste).

(h) *Fire extinguishers.* No deep fat fryer, flat top grill, or any other equipment that can produce grease vapors shall be used unless it is on a wheeled cart or motor vehicle. When sellers and salespersons use a deep fat fryer, a flat top grill, or any other equipment that can produce grease vapors, they must have on the wheeled cart or motor vehicle a minimum of ten pounds-ABC type fire extinguisher. Sellers and salespersons shall immediately prove compliance with this subsection upon the request of the city manager or any sworn law enforcement officer.

(i) *Reserved.*

(j) *Signs.* The only signs used as sales gear are signs allowed by this subsection. Two types of signs are allowed as sales gear, moveable and non-moveable signs. Both types of signs shall promote, advertise, or facilitate the sale of goods sold by direct use of that sales vehicle. Both types of signs shall have no other content. In this subsection, "sign" is defined as in article 11 of the Unified Development Ordinance (UDO). Nothing in the UDO, including article 11 (sign standards), shall reduce the requirements established by this article.

(1) A moveable sign is a freestanding sign placed on a paved sidewalk and not attached directly or indirectly to any public or private property. It shall not exceed two and one-half feet in width or four feet in height. As a further limitation, no dimension of a moveable sign as placed in use on a sidewalk shall exceed four feet. The entire moveable sign must be placed within 30 feet of the sales vehicle to which it is associated. A seller is allowed to place one moveable sign per sales vehicle, but if one salesperson uses more than one sales vehicle, no more than one moveable sign is allowed for all the sales vehicles used by that salesperson. Moveable signs shall comply with the requirements of sales gear. Moveable signs must be kept in good condition.

(2) All non-moveable signs must be securely attached to a sales vehicle.

(k) *Location of customer.* When a customer is within 50 feet of a salesperson, the salesperson shall not engage in any right-of-way sales activity with the customer, such as

selling goods or accepting payment, while the customer is in an on-street parking space, on a roadway, or in a motor vehicle regardless of the motor vehicle's location.

(l) *Reserved.*

(m) *Unattended sales gear.* Sellers and salespersons shall remove all sales gear from street right-of-way when the sales gear is not attended by a responsible individual for longer than ten minutes.

(n) *Registration.* Each seller selling food shall register and pay the registration fee in an amount set by the city council. Registration expires at the end of each June 30. Each seller shall promptly notify the city manager of changes to the seller's mailing address. While engaged in selling food pursuant to this section, all sellers and salespersons shall immediately show the registration receipt issued by the city upon request of any city employee or any sworn law enforcement officer.

(o) *Available remedies.* In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 166. City Code Section 54-110 shall be amended to add the underlined language where noted below:

"Sec. 54-110. Outdoor seating area.

(a) *Permit issued by manager.* The city manager or her or his designee may issue permits for outdoor dining areas pursuant to this section, on city maintained public rights-of-way, city sidewalks, public alleys, pedestrian ways, and publicly owned parcels.

(b) *Application.* Any eating establishment, restaurant, or private club desiring to operate an outdoor dining area shall, before the issuance of a permit, prepare and file an application with the city manager or his or her designee which shall contain the following information:

- (1) The name, address, and telephone number of the eating establishment, restaurant, or private club desiring to operate an outdoor dining area;
- (2) The name, address and telephone number of each of the eating establishment's, restaurant's, or private club's operators;
- (3) The type of food, beverage, and other products to be sold and served at the outdoor dining area;
- (4) The hours of operation of the eating establishment, restaurant, or private club and the proposed hours of operation of the outdoor dining area;
- (5) A scaled drawing or site plan showing the proposed outdoor dining area boundary and surrounding streetscape details. The drawing shall show the area to be used for the outdoor dining area and the area that will be kept clear for pedestrian use, and depict the proposed materials and placement of tables, chairs, barriers, and other furnishings. When seating is proposed in an at grade parking space or in a travel way within six feet of traffic, barriers shall be installed to protect pedestrians and customers from vehicular traffic.
- (6) Evidence of a valid insurance policy that will indemnify the city for any damage to the area used for outdoor dining, and for any damages for which the city incurs liability because of property damage or personal injury arising out of the use of the area used for outdoor dining. The minimum liability limit of the policy shall be \$1,000,000.00.

- (7) An indemnity statement, approved by the city attorney, whereby the owner of the establishment using the outdoor dining area agrees to indemnify and hold harmless the city and its officers, agents and employees from any claim arising from the operation of the outdoor dining area.
- (8) A copy of all permits and licenses issued by the state, county, or city, including health permits, all applicable ABC permits and business licenses, necessary for the operation of the eating establishment, restaurant, or private club, or a copy of the application for a permit if no permit has been issued. This requirement includes any permits or certificates issued by the city for exterior alterations or improvements to the eating establishment or restaurant.
- (9) Such additional information as may be requested by the city manager or his or her designee to determine compliance with this section.
- (10) If a tent or canopy is to be used, it must be fire rated and the fire rating for the tent must be permitted by the city, if applicable.
- (11) No fee is required for this application.

(c) *Issuance of permit.* No permit for the operation of an outdoor dining area will be issued unless the application is complete and unless the following requirements are met:

- (1) The outdoor dining area must be associated with an operating eating establishment, restaurant, or private club (collectively referred to as a "business") such that it is under the same management and shares the same food preparation facilities, and restroom facilities as the business. The outdoor dining area must be operated under the same name as the business, and may not be open or be operated at any time when the business is not open for business.
- (2) It is anticipated that there will be high demand for outdoor seating areas in the locations depicted on attachment A* ("Downtown Areas"), and it is the city's goal to distribute the available outdoor seating area as equitably as possible in the downtown areas. Upon passage of this temporary ordinance, city staff will announce an application deadline for the approval of new outdoor seating areas within the downtown areas. City staff will use its best efforts to assure that outdoor seating opportunities are distributed amongst the Businesses in the downtown design district such that the ratio of outdoor seating capacity in relation to pre-March 2020 indoor seating capacity is roughly equivalent among the applicant businesses. Outdoor seating that has previously been approved will be included in the determination of this ratio. In addition, city staff will endeavor to allocate the downtown areas in close proximity to the actual business location.
- (3) Tables, chairs, barriers, and other furnishings, as shown in the drawing or plan submitted with the permit application must be located in such a manner that a minimum four-foot-wide unobstructed pedestrian corridor is provided at all times through sidewalks or pedestrian ways. The outdoor dining area shall not block access to public amenities such as bicycle racks, street furniture, trash receptacles, dumpsters, and way finding or directional signs.
- (4) An unobstructed pedestrian corridor of a minimum of four feet straight out must be maintained between any eating establishment, restaurant, or private club entrance and the pedestrian corridor. The outdoor seating shall not negatively impact compliance with the Americans with Disabilities Act.

- (5) Outdoor dining areas may locate in front of adjacent properties or businesses with the written permission of the current adjoining property and business owner; a copy of the permission must be filed and maintained with the application.
- (6) The outdoor dining area may be located adjacent to the building or next to the curb, provided there is at least two feet of clearance between the dining area and the curb (three feet of clearance required if adjacent to on-street parking). The dining area may be located within on-street parking areas, if approved by the transportation department. Outdoor dining areas may also be permitted on nearby public alleys, or city parks if approval is granted by the appropriate city departments.
- (7) The amount of outdoor seating allowed shall comply with the more restrictive of an order from the governor or a local emergency order, or as otherwise established by NC law.
- (8) Wider pedestrian corridors or increased clearances may be required where warranted by pedestrian traffic, or to comply with the North Carolina Building Code, the Americans with Disabilities Act, or other laws. This is subject to inspection by appropriate city departments.
- (9) The tables, chairs, barriers, and other furnishings used in the outdoor dining area shall be of a type that is easily movable. These items shall not be permanently affixed to the sidewalk, street, public alley or pedestrian way and must remain within the designated boundaries of the approved outdoor seating permit. There shall be no permanent attachments to the sidewalk, buildings, or other structures as a component of the outdoor seating that is permitted
- (10) Except as elsewhere permitted, the operation or furnishing of the outdoor dining area shall involve no permanent alteration to or encroachment upon any street, sidewalk, public alley or pedestrian way or to the exterior of the associated eating establishment, restaurant, or private club.
- (11) Except as required by subsection (d)(4) below, signage in the outdoor dining area shall conform to the applicable signage provisions of the UDO.
- (12) Umbrellas must be fixed so as to leave a clear height of seven feet from the sidewalk surface. Umbrellas are not allowed within vehicular sight triangles.
- (13) The application has been reviewed and an administrative certificate of appropriateness has been issued by the planning department, if required.

(d) *Alcoholic beverages.* Notwithstanding any city code provision to the contrary, alcoholic beverages may be served in outdoor dining areas provided the following requirements are met:

- (1) The outdoor dining area shall be part of a standard restaurant or private club as those terms are defined in G.S. § 18B-1000, and shall otherwise be authorized, permitted or licensed under state laws, county rules, and the city code to serve and sell alcoholic beverages for on premise consumption.
- (2) The portion of the outdoor dining area where alcohol is or may be served shall be delineated by clearly visible barriers and shall not have more than two designated points of ingress and egress.
- (3) The outdoor dining area must comply with all applicable ABC permitting requirements and applicable state laws regarding the sale and consumption of alcoholic beverages on-premises.

- (4) Signs shall be posted and visible at all designated exit points from the outdoor dining area stating that it is unlawful to remove alcoholic beverages in open or unsealed containers from the premises. The restaurant or private club operators shall be responsible for ensuring that no alcohol is served or consumed outside the designated outdoor dining area.

(e) *Operation, appearance, and maintenance requirements.* An outdoor dining area shall be operated in such a manner to comply with the following requirements:

- (1) Outdoor dining is limited to the area approved by the city as specified on the permit application.
- (2) No more patrons than can be accommodated by the actual seats provided in the outdoor dining area may occupy the outdoor dining area. This does not include patrons travelling through the outdoor dining area to enter or exit the eating establishment, restaurant, or private club.
- (3) Except for planters and pots, all furniture, barriers and associated furnishings, including but not limited to umbrellas, signage, table top candles, and other accessory items, shall be removed from the sidewalk, public alley or pedestrian way at closing and stored inside the eating establishment, restaurant, or private club, unless otherwise provided in the approved permit. In addition, planters, pots, furniture, associated furnishings, and barriers used in the operation of the outdoor dining area must be removed within 24 hours of notice from the city. If such items are not removed upon 24 hours' notice, the city shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The city shall also have the right to remove such items immediately in emergency situations.
- (4) Eating establishment, restaurant, or private club operators shall keep the outdoor dining area clean of all litter as required by section 26-123 of the Durham City Code.
- (5) Umbrellas and other outdoor dining area furniture shall be kept clean and in good repair.
- (6) Compliance with all conditions required for issuance of an outdoor dining area permit shall be maintained while operating pursuant to the permit.
- (7) The city shall not be responsible for damage to outdoor dining area tables, chairs, barriers, furnishings and accessories of any kind under any circumstances.
- (8) The eating establishment, restaurant, or private club owners shall be responsible for repairing any incidental damage to any city property resulting from the operation of the associated outdoor dining area. Any repair work shall be in accordance with applicable federal, state, and local laws, regulations and standards.

(f) *Reservation of rights.* The city reserves the right to require any outdoor dining area established pursuant to this section to cease part or all of its operation in order to allow for construction, maintenance, or repair of any street, sidewalk, utility, or public building by the city, its agents or employees, or by any other governmental entity or public utility; and to allow for use of the street or sidewalk in connection with parades, civic festivals, and other events of a temporary nature as permitted by the city.

(g) *Transfer and expiration.* A permit is not transferable. A permit issued pursuant to these temporary rules shall expire upon the expiration of these temporary rules. A permit may be revoked pursuant to section 54-141.

(h) Available remedies. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 167. City Code Section 54-112 shall be amended to add the underlined language where noted below:

"Sec. 54-112. Sales near DBAP.

(a) *Sales near DBAP.* Nothing in section 54-91 shall allow sales on street right-of-way in the Durham Bulls Athletic Park (DBAP) area during the period of 90 minutes before the scheduled time of any Durham Bulls baseball game in the DBAP until 30 minutes after the official end of the game. The DBAP area is defined to be the area bounded by Roxboro Street, Pettigrew Street, Julian Carr Street, and Highway 147. The DBAP area includes the land that would be within Julian Carr Street if that street were extended, from its current southern terminus with the same right-of-way width that it has at that southern terminus, to intersect with Highway 147. The DBAP area includes the land contained within the street right-of-way of the four streets that bound the DBAP area.

(b) *Sales near DPAC.* Nothing in section 54-91 shall allow sales on street right-of-way in the DPAC area during the period of 90 minutes before the scheduled time of any event in the DPAC until 30 minutes after the scheduled end of the event. For purposes of this subsection, an "event" in the DPAC is a performance or other activity that the person designated by the city manager or city council as the operator of the DPAC estimates is likely to draw an audience of at least 500 individuals to the DPAC, and the scheduled time and end of an event shall be as determined by said operator. This subsection shall be apply only with respect to events for which the operator has provided to the city manager, at least 20 days before the day of the event, a written statement of the nature of the event, the date of the event, and its scheduled time and end. The DPAC area is defined to be the area bounded by Roxboro Street, Pettigrew Street, Julian Carr Street, and Highway 147. The DPAC area includes the land that would be within Julian Carr Street if that street were extended, from its current southern terminus with the same right-of-way width that it has at that southern terminus, to intersect with Highway 147. The DPAC area includes the land contained within the street right-of-way of the four streets that bound the DPAC area.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 168. City Code Section 54-114 shall be amended to add the underlined language where noted below:

"Sec. 54-114. Sales on closed or blocked streets in conjunction with special-event permits.

Except to the extent a special-event permit otherwise provides, no person other than the special-event permittee shall engage in right-of-way sales activities on the portion of any street that is closed or blocked by an order issued pursuant to section 66-430. Except to the extent a special-event permit otherwise provides, subsection 54-88(a) does not apply to the portion of any street that is closed or blocked by an order issued pursuant to section 66-430. Except to the extent otherwise provided by the permit and subject to such terms and conditions as the city manager deems proper, the permittee may create exceptions to the prohibition established by

the first sentence of this section on the closed or blocked street. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 169. City Code Section 54-115 shall be amended to add the underlined language where noted below:

"Sec. 54-115. Sales at permitted events in city parks, plazas, and properties.

(a) *Definition of permitted sales location.* When a special-event permit is in effect for a park, plaza, or other property and the park, plaza, or other real property is owned or controlled by the city, the places in such park, plaza, or other property where the permittee or other persons are authorized by the permit to sell goods or to authorize others to sell goods are collectively referred to in this section as the "permitted sales location."

(b) *Prohibition of right-of-way sales activities.* No person shall engage in right-of-way sales activities on a permitted sales location except as authorized by the permit. If the permit authorizes activities that include selling goods on only a portion of the park, plaza, or other real property, no person shall engage in right-of-way sales activities elsewhere on the park, plaza, or other property. The permit may provide for exceptions to the prohibitions created by this subsection.

(c) *Authority to issue permits.* The city manager is authorized to issue the permits described in this section. The permit may contain such terms and conditions as the city manager deems proper. The permit may provide that only sellers specified in the permit, and/or only sellers authorized by the permittee, may sell goods on a specified portion or all of the park, plaza, or property.

(d) *Available remedies.* In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 170. City Code Section 54-140 shall be amended to add the underlined language where noted below:

"Sec. 54-140. Display of permit.

All individuals conducting any activity for which a permit is required under this article and all permittees shall (1) immediately show the permit upon request of the city manager or any sworn law enforcement officer, and (2) prominently display the permit at all times while conducting any activity for which a permit is required under this article so that the permit is easily seen and not covered and so that the text of the permit can be read by the public without their having to ask to see it. The city manager may amend an already-issued permit to impose, as additional conditions of the permit, additional requirements respecting the posting of permits. Those amendments shall be effective on the fourth day after the notice of amendment is mailed to the permittee's address as stated in the permit application. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 171. City Code Section 54-188 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 54-188. Penalties for violations.

(a) *Assessment of civil penalties.* The city manager shall assess civil penalties for violation of this article, including the terms of a permit. The city manager shall give the offender written notice of the nature of the violation and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the city manager. The civil penalty shall be \$200.00 per violation plus the costs incurred by the city resulting from the violation, including costs of removing litter.

(b) *Review of assessment of civil penalties.* Any person who has been assessed a civil penalty under this article may have that assessment reviewed by filing a written request in the office of the city manager within ten days of the date of service of the notice of the civil penalty. A person designated by the city manager for this purpose who is neither the person who assessed the civil penalty nor that person's subordinate shall be named as the hearing officer to conduct a hearing in order to review the assessment. The city manager shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The person assessed the penalty and the city manager may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a review within the time and in the manner provided for in this subsection constitutes a waiver of the right of review.

(c) *Collection of civil penalties.* If the offender does not pay the civil penalty within ten days after having been served with the notice of the civil penalty, the city manager may collect the civil penalties by causing to be commenced civil actions in the nature of debt. The city manager may compromise such claims, before or after commencement of the civil action, if the city manager finds there is a reasonable probability that the city will be unable to collect the entire amount of the claim, that the amount offered in compromise of the claim reasonably reflects either the amount of money available from the offender or the amount the city is likely to recover in the civil action, taking into account the resources required to pursue the civil action, and that the facts and circumstances of the events giving rise to the claim, taken as a whole, indicate that the amount offered in compromise is fair and reasonable. Using the foregoing standards, in an appropriate case, the city manager may abandon a claim.

~~(d) *Criminal remedies.* Except for provisions, if any, of this article that regulate the operation or parking of motor vehicles, each violation of this article, including the terms of a permit, is a misdemeanor punishable by a maximum fine of \$500.00.~~

~~(de) *Reserved.*~~

~~(ef) *Available remedies.* This article and the provisions of permits issued under this article may be enforced by an appropriate equitable remedy, including abatement orders and mandatory or prohibitory injunctions, issuing from a court of competent jurisdiction. The general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law. In applying subsection 1-9(e), the city council intends that termination and revocation of a permit be considered to be remedies.”~~

Section 172. City Code Section 54-191 shall be amended to add the underlined language where noted below:

“Sec. 54-191. Reservation of rights in city; other ordinances and N.C. DOT not limited.

(a) To the extent directed by the city, any person allowed to do any activity by this article or by a permit issued under this article shall promptly cease the activity and remove all property that the city deems to interfere with the purposes for which the direction is given. The city reserves the right to require any activity allowed by this article or by a permit issued under this article to cease in whole or in part, for any purpose, including:

- (1) To allow for construction, maintenance, or repair of any street, sidewalk, utility, building, or facility;
- (2) To allow for use of a public street, sidewalk, utility, building, or facility in connection with parades, festivals, or other events;
- (3) To remedy a nuisance; or
- (4) To protect or promote the public health, safety, or welfare.

(b) To the extent directed by the city, any person allowed to do any activity by this article or by a permit issued under this article shall promptly cease the activity and remove all property that the city deems to interfere with the purposes for which the direction is given.

(c) In case of emergency, danger to property, or detriment, danger, or hazard to public health, safety, or welfare, the city manager may, orally or in writing, order a seller or salesperson to immediately move such distance as the city manager specifies, and to cease acts determined by the city manager to contribute to the emergency, danger, detriment, or hazard. Upon receiving such order, the seller or salesperson shall comply. When such an order is not complied with (including because the seller or salesperson is not readily found), the city manager may cause objects in violation of the order to be removed, disposed of, or both, and the cost of such actions shall be borne by the offender. This subsection shall not be construed to limit subsection (a).

(d) Nothing in this division shall be construed to limit any other ordinance, including section 38-22 (parking in city parks), section 66-108 (driving over curbs, gutters or sidewalks at places other than those constructed and designed for traffic), section 66-109 (driving on sidewalk), section 66-116 (operation in public parks), and those imposing parking restrictions. Nothing in this division shall be construed to limit the authority of the N.C. Department of Transportation over rights-of-way under its jurisdiction.

(e) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 173. City Code Section 54-217 shall be amended to add the underlined language where noted below:

“Sec. 54-217. Licensing of massage therapy establishments.

(a) No person shall operate a massage therapy establishment as herein defined unless such person shall have first applied for and received the license provided by this section.

(b) Every application for the license prescribed herein shall be upon a form approved by the city manager and shall be filed with the city clerk. Every such application shall be made under oath and shall contain the following information:

- (1) If the applicant is a person, the name and residence address of such person. If the applicant is a partnership, corporation or association, the name and residence address of each person having any legal or beneficial interest in such applicant;
- (2) The address of the premises where the massage therapy establishment shall be located;
- (3) A complete statement of all convictions of any person whose name is required to be given in subsection (b)(1) of this section for any felony or prostitution or any violation of the law relating to prostitution;
- (4) A complete statement of any revocation, by any governmental unit, of any license to operate a massage therapy establishment or to engage in the business or profession of massage therapy held by any person whose name is required to be given in subsection (b)(1) of this section;
- (5) A complete statement of any conviction of any person whose name is required to be given in subsection (b)(1) of this section; for violation of any statute, law, ordinance or regulation of any government concerning the operation of a massage therapy establishment or the business or profession of massage therapy;
- (6) The name and address of any massage therapy establishment or other establishment owned or operated by any person whose name is required to be given in subsection (b)(1) of this section wherein the business or profession of massage therapy takes place; and
- (7) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

(c) The city clerk shall transmit a copy of the application to the police department for an investigative report; to the city-county inspections department to determine compliance with all zoning and building regulations and ordinances; and the fire department to determine compliance with any law relating to fire protection. These departments shall, within a reasonable time, not to exceed 30 days, report the results of their examinations to the city clerk.

(d) An application in proper form, accompanied by all reports required by this section, shall be submitted to the city manager, who shall approve such application if the city manager determines that:

- (1) The application contains no misstatement of fact;
- (2) The applicant, or any person having any legal or beneficial ownership interest in the applicant is over the age of 18 years and has not been convicted of any crime involving sexual misconduct, including, but not limited to, G.S. 14-177 through G.S. 14-202.1 (Article 26, Offenses Against Public Morality and Decency) and G.S. 14-203 through G.S. 14-208 (Article 27, Prostitution), of section 46-172, or of any federal statute relating to prostitution, or of any violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage therapy;
- (3) The proposed establishment conforms to all requirements of applicable zoning, building, and fire prevention codes; and

- (4) The applicant or any person having a legal or beneficial ownership interest in the applicant has not, for the three-year period preceding the application, had a previously issued license for engaging in the business or profession of massage therapy revoked.

(e) Upon approval of the application by the city manager, the collector of revenue shall issue a license to applicant.

(f) A license issued pursuant to this section shall be revoked by action of the city council if the city council determines that:

- (1) The licensee has violated any provision of this article including the provisions of section 54-220;
- (2) The licensee, or any agent of the licensee, permits any person to perform massage therapy on the premises of the applicant's massage therapy establishment or employs any person to practice the business or profession of massage therapy who has not been issued the license required by section 54-218, or whose license under section 54-218 has been revoked;
- (3) The licensee, or the legal or beneficial owner of any interest in the licensee, is convicted of any crime involving sexual misconduct, including the laws indicated in subsection (d)(2) of this section;
- (4) Any employee of the licensee is convicted of any felony in connection with his or her employment, or is convicted of any crime involving sexual misconduct, including the laws indicated in subsection (d)(2) of this section; or
- (5) The licensee violates any zoning, building, or fire prevention ordinance.

(g) A license issued pursuant to this section is void if the licensee moves or ceases operating a massage therapy establishment at the location required to be stated in the application for license pursuant to subsection (b)(2) of this section.

(h) Any person whose application for a license is denied by the city manager pursuant to subsection (d) of this section may appeal from such decision to the city council. An appeal is taken by filing written notice of such appeal with the city clerk within ten days following the date of the decision. The city council shall set the appeal for hearing in the manner provided by section 54-222. The city council may affirm or reverse the city manager's decision.

(i) A license issued pursuant to this section and a license issued pursuant to section 54-218 is required when a person offers massage therapy in his or her own home to clients. A license issued pursuant to section 54-218 is required when a person offers massage therapy solely on an outcall basis.

(j) In addition to any other remedy available in the Code, operating a massage therapy establishment without a license as required by this section may subject the offender to a civil penalty assessed and collected in accordance with the provisions set forth in Sec. 54-188(a) through (c).

Section 174. City Code Section 54-218 shall be amended to add the underlined language where noted below:

“Sec. 54-218. Licensing of massage therapists.

(a) No person shall engage in the business or profession of massage therapy unless such person shall have first applied for and received the license provided by this section.

(b) Applicants must be at least 18 years of age and must satisfy at least one of the following requirements:

- (1) The applicant must have graduated from an institute or school of massage therapy and completed at least 500 hours of supervised classroom instruction. The institute or school must have been:
 - a. Licensed by the North Carolina Department of Community Colleges or the equivalent educational licensing authority of another state;
 - b. Accredited by an accreditation commission which is recognized by the United States Department of Education; or
 - c. Designated as curriculum-approved by the American Massage Therapy Association - Commission on Massage Training Approval/Accreditation; or
- (2) The applicant is presently nationally certified in therapeutic massage and bodywork by the National Certification Board for Therapeutic Massage and Bodywork.

(c) The application for the license required by this section shall be upon a form approved by the city manager and shall be filed with the city clerk. Such application shall be given under oath and shall contain the following information:

- (1) The name, age, and residence address of the applicant;
- (2) A complete statement of the previous business or occupation of the applicant for the two years immediately preceding the date of application, including any massage therapy establishment experience;
- (3) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local ordinance;
- (4) A complete statement of any revocation of any license granted by any governmental unit to the applicant to engage in the business or profession of massage therapy;
- (5) The date and place of applicant's birth, the names of applicant's parents and the residence address or addresses of the applicant for the five years immediately preceding the date of application; and
- (6) A diploma or certificate of graduation and official transcript from an institute or school described in subsection (b)(1) of this section; or a valid certificate from the National Certification Board for Therapeutic Massage and Bodywork.

(d) The applicant shall submit, as part of the application required in subsection (b) of this section, the following:

- (1) Fingerprints of the applicant taken by the police department; and
- (2) Two recent photographs of the applicant's head and shoulders, of a size and quality prescribed by the city manager.

The additional information required by this subsection shall be provided at the applicant's expense. The additional information specified in subsections (d)(1) and (d)(2) of this section need not be furnished with subsequent applications to renew the license.

(e) The city clerk shall transmit a copy of the application to the police department for an investigative report. The police department shall, within a reasonable time, not to exceed 30 days, report the results of its investigation to the city clerk.

(f) An application in proper form shall be submitted to the city manager together with the police department's report required by this section. The city manager shall approve such application if the city manager determines:

- (1) That the applicant is at least 18 years of age;
- (2) The application contains no misstatement of fact;
- (3) The applicant has not been convicted of any crime involving sexual misconduct, including sections of North Carolina General Statutes cited in section 54-217(d)(2) or of section 46-172, or of any federal statute relating to prostitution, or for violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage therapy;
- (4) The applicant has not, for the three-year period preceding the application had a previously issued license for engaging in the business or profession of massage therapy revoked; and
- (5) The applicant has not been previously convicted of any violation of any provision of this article.

(g) Upon approval of the application by the city manager, the collector of revenue shall issue a license to the applicant.

(h) The city council shall have authority to direct that any person licensed under this section submit to a medical examination by a licensed physician approved by the city council. This authority shall be exercised only when the council has reason to believe that any such person has contracted a communicable disease. Refusal to submit to such examination shall be grounds for revocation of such license as provided in subsection (i) of this section.

(i) A license issued pursuant to this section shall be revoked by action of the city council if the city council determines:

- (1) The licensee has violated any provision of this article;
- (2) The licensee is afflicted with a communicable disease;
- (3) The licensee has failed to be examined by a licensed physician when required by the city council pursuant to subsection (h) of this section;
- (4) The licensee has been convicted of a felony or any crime involving sexual misconduct, including sections of North Carolina General Statutes referred to in subsection (f)(3) of this section, or of violating section 46-172, or under any federal statute relating to prostitution, or for violation of any laws or ordinance of any governmental unit related to the business or profession of massage; or
- (5) The licensee allows the use of his or her license by another person.

(j) Any person whose application for a license is denied by the city manager pursuant to subsection (i) of this section may appeal from such decision to the city council. An appeal is taken by filing written notice of such appeal with the city clerk within ten days following the date of the decision. The city council shall set the appeal for hearing in the manner provided by section 54-222. The city council may affirm, modify or reverse the city manager's decision.

(k) In addition to any other remedy available in the Code, engaging in the business or operation of massage therapy without a license as required by this section may subject the offender to a civil penalty assessed and collected in accordance with the provisions set forth in Sec. 54-188(a) through (c)."

Section 175. City Code Section 54-221 shall be amended to add the underlined language where noted below:

“Sec. 54-221. Posting of license.

(a) Every massage therapist shall post the license required by this article in his or her work area at all times, provided, however, the requirements of this section are satisfied by the posting of a photocopy of the license when the massage therapist is performing outcall massage therapy.

(b) Every person licensed under section 54-217 shall display such license in a prominent place in the licensed massage therapy establishment.

(c) The provisions of this section apply to temporary licenses issued under section 54-219.

(d) In addition to any other remedy available in the Code, violation of any provision of this section may subject the offender to a civil penalty assessed and collected in accordance with the provisions set forth in Sec. 54-188(a) through (c).”

Section 176. City Code Section 54-243 shall be amended to add the underlined language where noted below:

“Sec. 54-243. Record of purchases; inspection of articles.

Persons engaged in the business of buying or dealing secondhand goods, wares and merchandise, including junk dealers and pawnbrokers, shall record in a book kept for that purpose each article purchased or pawned and the name, race, residence and occupation of the seller or pawnor. Such records shall contain a full description of such articles and show all distinguishing marks, numbers, brands, letters or monograms of any kind on such articles. Every article so purchased or pawned shall remain at such place of business of such dealer open to inspection for at least five days before being moved or otherwise disposed of. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 177. City Code Section 54-244 shall be amended to add the underlined language where noted below:

“Sec. 54-244. Daily reports.

Every person engaged in the business of buying or dealing in secondhand goods, wares, and merchandise, including junk dealers and pawnbrokers, shall, on every business day before 10:00 a.m., report to the police department, a list and description of all secondhand goods, wares, merchandise and all items of personal property received, acquired or loaned on during the preceding day, and a description of the person of whom received, including race, sex, place of residence and occupation. Such daily list shall be signed and dated by the person conducting such business, and, in the case of junk dealers and pawnbrokers, shall be signed by the person in whose name the pawnbroker or junk dealer license was issued. In the case of a corporate licensee, such daily list shall be signed by a duly authorized officer or agent of such corporation. If no such property was received, acquired or loaned upon during a business day, the daily list shall be returned marked "none." If a secondhand dealer, junk dealer or pawnbroker shall not be open for business on any weekday, such person shall return the daily list for such day marked

"not open for business." In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 178. City Code Section 54-245 shall be amended to add the underlined language where noted below:

"Sec. 54-245. Sale of secondhand clothing rummage sales.

Any person engaged in the business of selling secondhand clothing, shoes, hats and like articles, shall first obtain a permit from the board of health, and comply with such rules and regulations as the board of health may adopt in connection with such business; provided, however, no rummage sale or sale of secondhand clothing, shoes, hats and like articles shall be made and no display of such articles shall be permitted upon any street or sidewalk of the city. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 179. City Code Section 54-246 shall be amended to add the underlined language where noted below:

"Sec. 54-246. Permit to deal in junk.

Any person now engaged in or proposing to engage in the business of buying, selling or handling, storing or hauling any junk, as defined in section 54-241, shall make a written application to the chief of police for a permit, which application shall state the place where such business is conducted or is to be conducted and shall be signed by five residents of the city, vouching for the good character of the applicant. Such written application shall, by proper endorsement thereon, be approved by the board of health, showing that such place of business complies with the regulations of the board of health. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 180. City Code Section 54-261 shall be amended to add the underlined language where noted below:

"Sec. 54-261. Begging or soliciting alms or contributions.

(a) Definitions:

Accosting another person means approaching or speaking to someone in such a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act or damage to property in his or her immediate possession.

Forcing oneself upon the company of another person means:

- (1) Continuing to request or solicit alms or contributions in close proximity to the person addressed after that person has responded negatively;
- (2) Blocking the passage of the person addressed; or
- (3) Otherwise engaging in conduct that reasonably could be understood as intended to force a person to accede to demands.

Public place includes streets, sidewalks, alleys, and other public property, as well as city-owned and city-controlled property and private property held open to the public unless permission to solicit has been obtained from the city or from the private property owner or other person in authority.

To beg or solicit alms or contributions includes the spoken, written, or printed word or such other acts as are conducted in furtherance of the purpose of obtaining alms or contributions.

(b) It shall not be unlawful to beg or solicit alms or contributions except when performed in the following manner:

- (1) In a public place by accosting another person or forcing oneself upon the company of another person;
- (2) Within 20 feet of an entrance or exit of any bank or financial institution or within 20 feet of any automated teller machine;
- (3) In any public transportation vehicle owned or operated by the city or at any terminal or station for such vehicle or within six feet of a stop for such vehicle; or
- (4) In a public place during the time period that begins 20 minutes after sunset and ends 20 minutes before sunrise. For purposes of enforcement of this section, the terms "sunrise" and "sunset" shall be determined by and based on the times for those events published daily by the U.S. Naval Observatory Astronomical Applications Department.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 181. City Code Section 54-264 shall be amended to add the underlined language where noted below:

"Sec. 54-264. Contact with and intrusion into occupied motor vehicle.

It is unlawful for a pedestrian to place a tangible thing or any part of his or her body on or inside an occupied enclosed vehicle that is on the roadway. This section is not intended to repeal or affect any other provision in this Code or any authority to act provided for by any other provision in this Code. This section does not apply:

- (1) If the pedestrian has a right to possess, occupy, or use the vehicle, or the consent of a person with a right to possess, occupy, or use the vehicle;
- (2) If the pedestrian has an ownership interest in the vehicle, or the consent of a person with an ownership interest in the vehicle;
- (3) If an occupant requests that the pedestrian take that action or consents to the taking of the action; or if an occupant requests that the pedestrian deliver the tangible thing to an occupant or consents to such delivery; or if an occupant requests that the pedestrian receive a tangible thing from an occupant or consents to receiving it;
- (4) To the following persons while engaged in the performance of their respective occupations:
 - a. Persons authorized by a governmental person to take the action; or
 - b. Firefighting personnel, law enforcement personnel, EMS personnel, health care workers or providers, military personnel, civil preparedness personnel,

emergency management personnel, or emergency management workers (defined by G.S. 166A-19.60(e));

- (5) To the extent that firefighting personnel, law enforcement personnel, EMS personnel, health care workers or providers, military personnel, civil preparedness personnel, emergency management personnel, or emergency management workers (defined by G.S. 166A-19.60(e)) direct otherwise for the purpose of promoting safety of persons or property or to address an emergency; or
- (6) To actions taken in response to an emergency.

In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 182. City Code Section 62-1 shall be amended to add the underlined language where noted below:

“Sec. 62-1. Building numbering.

(a) It shall be the duty of the owner of each house or other building to properly display on the front thereof, or on the grounds, in a position easily observed, the proper number of his or her house or other building. The owner shall make application to the city for such house or building number assignment.

(b) It shall be unlawful for the owner of any house or other building to which a street number has been assigned and affixed to attach or paint, or permit to be or remain attached to, or painted on such house or other building, or on the grounds, any figure tending or purporting to indicate the street number on such house or other building or on the grounds, unless the number so indicated be the street number assigned to such house or other building as herein provided.

(c) Upon notice by the city to any owner or occupant of any house or other building, it shall be the duty of such owner or occupant, within ten days after such notice shall have been given, assigning to such house or other building a number, to cause such house or other building to be numbered as provided in subsection (a) of this section, at the expense of such owner or occupant.

(d) It shall be unlawful for any person to remove, obliterate or destroy any such number attached to, or painted on such house or other building, as required to be displayed by the provisions of subsection (b) of this section.

(e) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 183. City Code Section 62-2 shall be amended to add the underlined language where noted below:

“Sec. 62-2. House number on face of curb.

(a) *Required standard.* It shall be unlawful for any person, group or business entity to paint house or building numbers on the face of the curb unless done in the following manner:

- (1) Paint house or building number in luminous paint on a contrasting background;

- (2) Locate the house or building number near the driveway cut for the house, building or lot, or in some other easily observed no-parking area upon which the structure or lot fronts;
- (3) Use plain, unflourished block numbers that are at least four inches high where the face of the curb so permits such a minimum height, or the maximum height less than four inches that is possible on the curb face; and
- (4) Paint only the proper house or building number as assigned pursuant to section 62-1.

(b) *Additional requirements.* Any person, group or business entity that proposes to paint house or building numbers on the face of the curb for hire shall first obtain a privilege license from the city collector of revenue. Any person or other entity shall obtain the permission of the owner or occupant of the house, building or lot prior to painting a number on the face of the curb upon which the structure or lot fronts.

(c) *Penalties.* In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 184. City Code Section 62-4 shall be amended to add the underlined language where noted below:

"Sec. 62-4. Duty of owner of property abutting improved sidewalks, etc., with reference to grading property or constructing retaining wall.

All owners of property abutting upon concrete, brick or other permanently improved sidewalks or curb and gutter shall grade such property or construct a retaining wall in such a manner as to prevent the washing of dirt, grass, trash or other material upon the sidewalks of the city. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 185. City Code Section 62-5 shall be amended to add the underlined language where noted below:

"Sec. 62-5. Removal of material; permission required.

No person shall remove any sand, dirt or any other street building material from any street or sidewalk without permission of the city. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 186. City Code Section 62-6 shall be amended to add the underlined language where noted below:

"Sec. 62-6. Spaces under sidewalks; cellar doors, grates, roofs—Generally.

(a) No person shall use or appropriate any space under a sidewalk for cellar or other underground uses without first obtaining a permit from the city council, which permit shall be revokable at the will of the council with or without notice.

(b) It shall be unlawful for any person to construct or maintain any cellar doors or grating on the sidewalks of the city without first obtaining a permit from the city council for the same.

(c) The sidewalk over any underground space shall be constructed and maintained by such permittee so as to permit travel over the same by pedestrians free from danger. The roofs over any such underground space or vault shall be of approved incombustible material. Glass, when used in the sidewalk over such underground space or vault shall be of approved incombustible material. Glass, when used in the sidewalk over such underground space or vault, shall measure not more than 16 inches square in one light, and each glass light shall be set in a metal shield and the joint filled with asphalt or some other acceptable material. The director of inspection services may revoke any permit granted for the building of any such roof or sidewalk whenever he or she shall ascertain that such roof or sidewalk is not being properly constructed or maintained.

(d) All such cellar doors or grates shall be on a level with the sidewalk and shall be kept in good repair by the owner or occupant of the abutting property. The design of cellar doors or grates shall conform to the requirements of the director of inspection services and the director of transportation and utilities. All such doors and grates shall be constructed of iron or some other indestructible material.

(e) In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 187. City Code Section 62-7 shall be amended to add the underlined language where noted below:

"Sec. 62-7. Same—Leaving open without providing guards and lights.

It shall be unlawful for any person to leave open any cellar door or opening extending into the sidewalk, as provided for in section 62-6, without providing proper guards and lights to warn and protect the traveling public. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 188. City Code Section 62-8 shall be amended to add the underlined language where noted below:

"Sec. 62-8. Duty of occupant of lot abutting street with reference to keeping sidewalk clear and gutter open.

The occupant of a lot abutting on any street shall keep the sidewalk clear and the gutter open and free from the obstructions as far as such lot extends. If any rubbish, dirt, ashes or other material be placed or left, without authority, on such sidewalk, or, in such gutter or street, the occupant of such lot shall remove the same within 12 hours after oral or written notice from the city. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 189. City Code Section 62-9 shall be amended to add the underlined language where noted below:

"Sec. 62-9. Duty of owner of building with reference to drainage on or across sidewalks.

It shall be unlawful for the owner of any building or premises, to allow rainwater or drain water to drain from such building, lot or premises onto a sidewalk, or to allow gutters, ditches, leaders, ducts or drainpipes to empty onto the sidewalks. Such drainpipes or ducts shall be

constructed to carry such water across the sidewalk areas to the gutter or a storm sewer, provided such drainpipes or ducts shall be constructed according to specifications prescribed by the city. Such drainage pipes, ducts and other devices for carrying such drain water or rain water across the sidewalk shall at all times be properly maintained in a safe manner by such property owner from whose property it runs. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 190. City Code Section 62-10 shall be amended to add the underlined language where noted below:

“Sec. 62-10. Impeding flow of travel.

(a) It is unlawful to impede the regular flow of travel on a sidewalk in such a manner as to block a pedestrian's or motor vehicle's attempted passage into or out of a driveway, without leaving a safe and adequate alternative route into or out of the driveway. Consent to such blocking given by an owner, tenant, lawful occupant, or person in control of the property to which the driveway leads is an affirmative defense.

(b) It is unlawful to impede the regular flow of travel on a sidewalk in such a manner as to block a pedestrian's or motor vehicle's attempted passage into or out of an entrance or exit of any residence, business, or public facility, without leaving a safe and adequate alternative route into or out of the entrance or exit. Consent to such blocking given by an owner, tenant, lawful occupant, or person in control of the residence, business, or public facility is an affirmative defense.

(c) This section does not apply to acts to the extent they are allowed by, and done in conformity with, a permit issued by a governmental person.

(d) This section does not affect other sections of the City Code, including section 66-108 and 66-109.

(e) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 191. City Code Section 62-11 shall be amended to add the underlined language where noted below:

“Sec. 62-11. Same—Dumping stumps, logs, etc., in street.

It shall be unlawful for any person to dump, or cause to be dumped, any stumps, logs, bricks, concrete, metal or other like material, other than earth excavation approved by the city, in dedicated or accepted streets, sidewalks or other public ways. Any person violating this section shall be given a written notice by the city to move such materials within 15 days. In addition to any other remedy available in the Code, failure to comply with the notice is a misdemeanor.”

Section 192. City Code Section 62-12 shall be amended to add the underlined language where noted below:

“Sec. 62-12. Maintenance of dangerous pit, embankment, etc., near or adjoining street or sidewalk.

It shall be unlawful for the owner, tenant or lessee of any premises adjacent to any street or sidewalk to maintain any dangerous pit, embankment, dangerous wall and like perilous thing near or adjoining any street or sidewalk. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 193. City Code Section 62-13 shall be amended to add the underlined language where noted below:

“Sec. 62-13. Warning lights, etc.—Required.

It shall be unlawful for any person engaged in building, altering or repairing the streets, sidewalks or other public ways of the city to leave such work in an unfinished condition without placing thereat sufficient lights or signs or other adequate means to warn the traveling public as approved by the director of transportation and utilities. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 194. City Code Section 62-14 shall be amended to add the underlined language where noted below:

“Sec. 62-14. Same—Removing or damaging barricade or signs giving notice of dangerous conditions of street.

It shall be unlawful for any person to remove, destroy, damage or tamper with any barricade, sign, lantern, torch or other device placed in any street, sidewalk or any other place by the city or anyone acting for the city or by any contractor, subcontractor or builder, intended to give notice to the traveling public that such street or portion thereof should not be traveled or as to the dangerous condition of the same or as to the existence of an obstruction. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 195. City Code Section 62-15 shall be amended to add the underlined language where noted below:

“Sec. 62-15. Removing or damaging monuments designating street lines or elevations.

It shall be unlawful for any person, engaged in the construction and repair of streets and sidewalks, to remove, relocate, destroy, damage or tamper with any monuments or metal pins designating street lines or elevations, unless approved by the director of transportation and utilities. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 196. City Code Section 62-16 shall be amended to add the underlined language where noted below:

“Sec. 62-16. Depositing brine, acid, oil, etc., on streets or sidewalks.

No person shall empty or deposit on the streets, sidewalks or other public ways any saltwater, brine, acid, alkali, oil, paint or other hazardous substances that will damage the streets, sidewalks or other public ways or vehicles using the same or storm drainpipes into

which the same may run. This section shall not prevent city staff or agents of the city from using before, during, or after a winter weather event any snow or ice removal technique (including, but not limited to, the use of saltwater or brine) that the public works department determines to be efficacious. In addition to any other remedy available in the Code, failure to comply with the notice is a misdemeanor.

Section 197. City Code Section 62-20 shall be amended to add the underlined language where noted below:

“Sec. 62-20. Encroachment of buildings, fences, etc.

(a) No person shall dig or lay the foundation of any house or other building within any street, sidewalk or other public way or erect any wall, fence or other structure abutting upon such street, sidewalk or other public way before ascertaining from the city the true property line and elevation of such street, sidewalk or other public way.

(b) The director of inspection services shall see that such foundation, building, house or other structure, except fences, retaining walls and steps when such steps are attached to and constitute a part of the building or structure in question, do not encroach upon the street, sidewalk or other public way in question.

(c) The director of inspection services shall see that such fences, retaining walls and steps, when steps are not attached to a building, and any other encroachments, do not encroach upon such street, sidewalk or other public right-of-way.

(d) In addition to any other remedy available in the Code, failure to comply with the notice is a misdemeanor.”

Section 198. City Code Section 66-3 shall be amended to add the underlined language where noted below:

“Sec. 66-3. Obedience to police.

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer. In addition to any other remedy available in the Code, failure to comply with the notice is a misdemeanor.”

Section 199. City Code Section 66-9 shall be amended to add the underlined language where noted below:

“Sec. 66-9. Unauthorized entry and assembly in city owned or operated parking facilities.

(a) The term "city owned or operated parking facility" means any parking garage or lot owned by, leased to, and/or operated by or for the city for the purpose of providing public parking.

(b) It shall be unlawful for any person to assemble with one or more other persons on a city owned or operated parking facility except for the purpose of lawfully parking or removing a vehicle in the facility. It shall not be a violation of this section to lawfully park a vehicle in a city owned or operated parking facility and leave the facility without delay or go upon a city owned or operated parking garage or lot and without delay proceed to a lawfully parked vehicle to exit the parking facility.

(c) It shall be unlawful for any person to enter upon or remain in a city owned or operated parking facility unless:

- (1) Such person is the owner, operator or passenger of a motor vehicle entering, leaving or parked in such parking facility;
- (2) Such person is an employee of the city regularly charged with the operation, maintenance or supervision of such parking facility; or
- (3) Such person has been previously authorized by an agent or employee of the city to enter upon such parking facility.

(d) This section shall not apply to an assembly of persons pursuant to any lawfully issued permit for a parade, demonstration or other event or congregation protected under the Constitution of the United States or of this state.

(e) In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 200. City Code Section 66-10 shall be amended to add the underlined language where noted below:

"Sec. 66-10. Distribution of items in city parking garages and city off-street parking lots.

It shall be unlawful for any person to pass out a leaflet or any other item or thing to any person in the city parking garages or on any of the off-street parking lots of the city. This section shall not apply to the operator or passengers of a vehicle in the city parking garages or on any of the off-street parking lots of the city who pass out a leaflet or other item or thing to the operator or any passengers of the same vehicle while the operator or passengers are:

- (1) In the vehicle;
- (2) Traveling between an entrance and exit of the garage or lot; or
- (3) Traveling between an exit and entrance of the garage or lot.

In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 201. City Code Section 66-11 shall be amended to add the underlined language where noted below:

"Sec. 66-11. Damaging, defacing property, street signs.

It shall be unlawful for any person to mutilate, deface, remove or, in any manner, damage any of the street signs, traffic signs or other signs of similar nature erected by any public governing body. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 202. City Code Section 66-12 shall be amended to add the underlined language where noted below:

“Sec. 66-12. Standing, sitting, and walking on median generally prohibited.

No person shall stand, sit, or walk on a median, provided that this section does not prohibit a person from taking such actions during the time needed to travel safely from one side of a roadway to the opposite side of the roadway, In this section, the definitions of median and roadway as set forth in section 54-26 apply. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 203. City Code Section 66-39 shall be amended to add the underlined language where noted below:

“Sec. 66-39. Obedience.

The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter and other traffic ordinances of the city unless otherwise directed by a police officer, subject to the exceptions granted the driver of a police or fire department vehicle in this Code or other ordinance of the city or by state statute. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 204. City Code Section 66-44 shall be amended to add the underlined language where noted below:

“Sec. 66-44. Display of unauthorized signs, signals or markings.

No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal. No person shall place or maintain, nor shall any public authority permit, upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property, adjacent to highways, of signs giving useful directional information and of a type that cannot be mistaken for official signs. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 205. City Code Section 66-104 shall be amended to add the underlined language where noted below:

“Sec. 66-104. Crossing railroad crossing when light illuminated or bell ringing.

At all public railroad crossings within the city at which the railroad company maintains and operates light and bell signaling devices, it shall be unlawful for any person to drive a vehicle across and upon such crossing when such light is illuminated and such bell is ringing to indicate and warn the approach of a train, locomotive or railroad car to such crossing. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 206. City Code Section 66-105 shall be amended to add the underlined language where noted below:

“Sec. 66-105. Right-of-way of fire apparatus.

In the event of an alarm of fire the apparatus of the fire department shall have the right-of-way in and upon the streets and railroad crossings in going to any fire. Every person in charge of any vehicle, wherever same may be located, shall, upon the sounding of a siren or other authorized alarm or the display of authorized warning lights, be in a position to and promptly move such vehicle out of the way of the firefighters, fire engines, trucks and other apparatus of the fire department. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 207. City Code Section 66-106 shall be amended to add the underlined language where noted below:

“Sec. 66-106. Driving, etc., through streets where public safety department is fighting fire.

It shall be unlawful for any unauthorized person to ride or drive any vehicle through the streets or other places in which the fire department is assembled for the purpose of extinguishing a fire. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 208. City Code Section 66-107 shall be amended to add the underlined language where noted below:

“Sec. 66-107. Running over fire hose, etc.

It shall be unlawful for any person to run, or allow to be run, any vehicle over or against the fire hose or other apparatus or equipment of the fire department. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 209. City Code Section 66-108 shall be amended to add the underlined language where noted below:

“Sec. 66-108. Driving over curbs, gutters or sidewalks at places other than those constructed and designed for traffic.

(a) It shall be unlawful for any person to operate or cause to be operated any vehicle upon or across any curb, gutter or sidewalk in the city at any place other than the driveways constructed and designed for such use, unless such person shall first provide a protective covering of timber or other suitable materials over such curb, gutter and sidewalk, which will be adequate to completely prevent such curb, gutter and sidewalk from being damaged by the operation of such vehicle upon, over or across the same.

(b) It shall be unlawful for any person to operate, or cause to be operated, any vehicle or equipment upon or across any curb, gutter or sidewalk in the city at any place other than a driveway constructed and designed for such use, as provided in this Code, unless such person shall first secure a permit from the city authorizing the provision of a protective covering of timber or other suitable, approved, materials for such curb, gutter and sidewalk, which protective covering shall be adequate to completely prevent such curb, gutter and sidewalk from being damaged by the operation of such vehicle or equipment upon, over or across the same.

(c) No person shall place timber or other material at the curbing for the purpose of regularly driving across the curb or driveway, without having obtained a permit therefor.

(d) In addition to any other remedy available in the Code, violation of this section is an infraction.

Section 210. City Code Section 66-109 shall be amended to add the underlined language where noted below:

“Sec. 66-109. Driving on sidewalk.

It shall be unlawful for any person, other than as authorized by this chapter, to drive any vehicle upon the sidewalks of the city, subject to the following exceptions:

- (1) Driving across a sidewalk over and through an established driveway, or
- (2) Sworn law enforcement officers, security guards as defined by G.S. 74C-3(a)(6), or emergency medical technicians riding bicycles while in the discharge of their official duties.

In addition to any other remedy available in the Code, violation of this section is an infraction.

Section 211. City Code Section 66-110 shall be amended to add the underlined language where noted below:

“Sec. 66-110. Vehicle with spikes on rims of wheels.

No person shall operate over, on, or along any street in the city, which is paved with batholithic or asphalt or other paving material, any tractor, motor vehicle or any other vehicle or machine, having on the rims of its wheels any spikes, flanges or other extensions which will sink into or mark the pavement. For the purpose of this section, operating shall be construed to include moving either by its own or some other source of power. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 212. City Code Section 66-111 shall be amended to add the underlined language where noted below:

“Sec. 66-111. Driving in funerals or other processions.

Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practical and follow the vehicle ahead as closely as is practical and safe. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 213. City Code Section 66-112 shall be amended to add the underlined language where noted below:

“Sec. 66-112. Driving through processions.

No driver of a vehicle shall drive between the vehicles or pedestrians comprising an authorized procession. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 214. City Code Section 66-113 shall be amended to add the underlined language where noted below:

“Sec. 66-113. Entering intersection or crosswalk when vehicle cannot be accommodated on other side.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he or she is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any official traffic-control device's indication to proceed. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 215. City Code Section 66-114 shall be amended to add the underlined language where noted below:

“Sec. 66-114. Sounding horn or warning device in quiet zone.

Whenever authorized signs are erected indicating a zone of quiet, no person operating a motor vehicle within any such zone shall sound the horn or other warning device of the vehicle except in an emergency. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 216. City Code Section 66-115 shall be amended to add the underlined language where noted below:

“Sec. 66-115. Obedience of driver of ambulance to traffic-control signals.

Whenever traffic is controlled by official traffic-control devices, placed in accordance with the provisions of this chapter or other traffic ordinances of the city, exhibiting the words "Go," "Caution" or "Stop" or exhibiting different colored lights successively one at a time, the driver of all ambulances, public or private, shall obey the instructions of such official traffic-control device applicable thereto in accordance with the traffic-control signal legend, unless otherwise directed by a police officer stationed at that intersection. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 217. City Code Section 66-116 shall be amended to add the underlined language where noted below:

“Sec. 66-116. Operation in public parks.

(a) Except as may be allowed by subsection (b) of this section, it shall be unlawful for any person to drive a motor vehicle in any park, playground, or other recreational area that is

operated by the city, except where specifically designated for such driving. As used in this section, a motor vehicle is a self-propelled vehicle. This term shall not include a device meeting all of the following requirements:

- (1) It is designated for and intended to be used as a means of transportation for a person with a mobility impairment;
 - (2) It is suitable for use both inside and outside a building; and
 - (3) Its maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment.
- (b) The city manager may make exceptions from subsection (a) of this section for:
- (1) Licensees, lessees, franchisees, permittees, employees, or contractors of the city engaged in inspection, construction, repair, or maintenance; or
 - (2) Firefighting personnel, law enforcement personnel, or EMS personnel while engaged in the performance of their respective occupations.

(c) In addition to any other remedy available in the Code, violation of this section is an infraction.

Section 218. City Code Section 66-117 shall be amended to add the underlined language where noted below:

“Sec. 66-117. Street closed to vehicular traffic; exceptions.

It shall be unlawful for any person to operate a motor vehicle on Orange Street Mall in the area between Parrish Street and Chapel Hill Street; provided, however, this section shall not apply to:

- (1) Emergency vehicles, including police, fire, ambulance and wrecker vehicles; and
- (2) Street maintenance and similar service vehicles owned and operated by the city and private delivery and service vehicles while making deliveries or carrying on loading or unloading operations on said mall.

In addition to any other remedy available in the Code, violation of this section is an infraction.

Section 219. City Code Section 66-118 shall be amended to add the underlined language where noted below:

“Sec. 66-118. Speed limits.

It shall be unlawful for the driver of a motor vehicle to fail, neglect or refuse to comply with established speed limits. In addition to any other remedy available in the Code, violation of this section is an infraction.

Section 220. City Code Section 66-119 shall be amended to add the underlined language where noted below:

“Sec. 66-119. Heavy vehicles restricted.

It shall be unlawful for any person to drive or operate, or to cause or permit to be driven or operated in designated areas, any truck, semitrailer, van or other vehicle of any description, which truck, semitrailer, van or other vehicle, together with its load, weighs in excess of the established weight for such area, or with more axles than the number permitted in such area. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 221. City Code Section 66-120 shall be amended to add the underlined language where noted below:

“Sec. 66-120. One-way streets.

Upon those streets and parts of streets which may be established and designated as one-way streets, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 222. City Code Section 66-121 shall be amended to add the underlined language where noted below:

“Sec. 66-121. Obedience to directional signs and signals approaching and within intersecting streets.

Whenever the approach to a street intersection is clearly marked by marks, buttons, lettering or other indications or directional signs or symbols placed upon the surface of the street within traffic lanes approaching an intersecting street or upon overhead or other type signs, indicating that no right or left or "U" turn is permitted from such lane, or that such lane shall be used for left turn only, or that such lane shall be used for right turn only, or that such lane shall not be used for any turn or deviation from such lane, or other course of travel to be followed in such lane is indicated, it shall be unlawful for any person to disobey the directions of any such signs, symbols or indications and drive such vehicle in a direction contrary to the direction designated for vehicles using such traffic lane by such signs and other indications. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 223. City Code Section 66-122 shall be amended to add the underlined language where noted below:

“Sec. 66-122. Operating vehicles across unbroken yellow centerlines on city streets prohibited.

It shall be unlawful for any person to operate a vehicle upon any street to the left of any unbroken yellow centerline marked on such street, subject to the following exceptions:

- (1) When necessary to turn on to or off of a city street;
- (2) When a broken yellow line is also marked immediately to the right side of the unbroken yellow centerline for traffic moving in the lane on that side of the unbroken yellow centerline;

- (3) When an obstruction exists making it necessary to drive to the left of the unbroken yellow centerline; provided, any person doing so shall yield the right-of-way to all vehicles traveling in the proper direction upon the opposite or unobstructed portion of the highway within such distance as to constitute an immediate hazard.

In addition to any other remedy available in the Code, violation of this section is an infraction.

Section 224. City Code Section 66-123 shall be amended to add the underlined language where noted below:

“Sec. 66-123. Stopping at stop sign or red traffic-control light.

It shall be unlawful for any person operating a motor vehicle or other vehicle upon any of the streets in the city to fail to bring such vehicle to a complete stop before entering an intersecting street where an official traffic signal facing the operator or driver of such vehicle is red, or where there is a stop sign containing the letters "Stop" thereon near such intersection and by means thereof giving notice to stop. Provided, however, any vehicle, after coming to a complete stop for a red official traffic signal or a stop sign facing the vehicle, may make a right turn after yielding to pedestrians and other vehicles, unless such right turn is prohibited by ordinance and a sign giving notice of such prohibition is posted. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 225. City Code Section 66-124 shall be amended to add the underlined language where noted below:

“Sec. 66-124. Yield intersections.

It shall be unlawful for any driver to fail to comply with yield-right-of-way signs notifying drivers of vehicles on the intersecting streets to yield the right-of-way to drivers of vehicles approaching the intersection on the main-traveled or through street so designated. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 226. City Code Section 66-148 shall be amended to add the underlined language where noted below:

“Sec. 66-148. Initial access to truck route.

(a) *Trucks with points of origin outside the city limits.*

- (1) The operator of a truck entering the city by way of a route that is not a designated truck route shall, upon entering the city, proceed to the nearest truck route.
- (2) Subsection (a)(1) of this section notwithstanding, when the shortest route between the point of entry into the city and the destination of a truck is less than the shortest route from the point of entry into the city to the nearest designated truck route, the operator of the truck, upon entering the city, shall not be required to proceed to the nearest designated truck route before proceeding to his or her destination.

(b) *Trucks with points of origin within the city limits.*

- (1) Where the origin of a trip is within the city, the operator of a truck shall, upon leaving the origin of his or her trip, proceed by the shortest route to the nearest designated truck route.
- (2) When the shortest route between the origin and destination of a truck of local origin is less than the distance between the origin and the designated truck route, the operator of a truck shall not be required to proceed to the nearest designated truck route before proceeding to his or her destination. Also, when the shortest distance between the origin and destination of a truck of local origin is less than the distance between the destination and the designated truck route, the operator of a truck shall not be required to proceed to the nearest designated truck route before proceeding to his or her destination.

(c) Penalties. In addition to any other remedy available in the Code, violation of this section is an infraction.

Section 227. City Code Section 66-149 shall be amended to add the underlined language where noted below:

“Sec. 66-149. Use of designated truck routes.

Once the designated truck route is reached, the operator of a truck shall proceed on such designated truck route until he or she reaches a point on that route that allows him or her to proceed by the shortest route to his or her destination. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 228. City Code Section 66-150 shall be amended to add the underlined language where noted below:

“Sec. 66-150. Evidence of destination and origin.

The operator of any truck not on a designated truck route shall have a bill of lading delivery slip, dispatch order, or other reasonable evidence to show the points of destination and origin of the trip then in progress. Failure to have such evidence shall constitute a separate violation of this division. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 229. City Code Section 66-238 shall be amended to add the underlined language where noted below:

“Sec. 66-238. Parking meters.

The city manager shall install parking meters to collect fees for metered spaces.

No person, except those authorized by the city manager, shall deface, damage, tamper with, open, or willfully break, destroy, or impair the usefulness of a parking meter. No person, except those authorized by the city manager, shall insert or deposit into a parking meter any object except to the extent specifically allowed by or specified in instructions provided for persons using the meter. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 230. City Code Section 66-273 shall be amended to add the underlined language where noted below:

“Sec. 66-273. Removal of vehicles and other objects.

(a) *Right of city to remove.* The city manager may cause to be removed any vehicle or other object from a temporary construction space or time-limited parking space when (i) a permit allowing the space to be occupied has been suspended, terminated, or revoked (whether or not the action is subject to review), (ii) the vehicle or other object in the temporary construction space or time-limited parking space violates the terms of a permit or this division, or impedes the regular flow of motor vehicle traffic, or (iii) the vehicle or other object in the temporary construction space or time-limited parking space endangers property or endangers or unduly inconveniences a person. The removal shall be to a garage or other location or facility designated by the city manager.

(b) *Duty of permittee to remove.* To the extent directed by the city, when a permit issued pursuant to this division is suspended, terminated, or revoked, any person allowed to do any activity by the permit, whether or not the permit remains valid, shall promptly cease the activity and remove all property that the city deems to interfere with the purposes for which the direction is given. In addition to any other remedy available in the Code, violation of this subsection (b) is a misdemeanor.”

Section 231. City Code Section 66-274 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 66-274. Penalties for violations.

(a) *Assessment of civil penalties.* The city manager shall assess civil penalties for violation of this division, including the terms of a permit. The city manager shall give the offender written notice of the nature of the violation and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the city manager. The civil penalty shall be in an amount \$100.00 per violation plus the costs incurred by the city resulting from the violation, including costs of removing litter.

(b) *Review of assessment of civil penalties.* Any person who has been assessed a civil penalty under this division may have that assessment reviewed by filing a written request in the office of the city manager within ten days of the date of service of the notice of the civil penalty. A person designated by the city manager for this purpose who is neither the person who assessed the civil penalty nor that person's subordinate shall be named as the hearing officer to conduct a hearing in order to review the assessment. The city manager shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The person assessed the penalty and the city manager may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a review within the time and in the manner provided for in this subsection constitutes a waiver of the right of review.

(c) *Collection of civil penalties.* If the offender does not pay the civil penalty within ten days after having been served with the notice of the civil penalty, the city manager may collect the

civil penalties by causing to be commenced civil actions in the nature of debt. The city manager may compromise such claims, before or after commencement of the civil action, if the city manager finds there is a reasonable probability that the city will be unable to collect the entire amount of the claim, that the amount offered in compromise of the claim reasonably reflects either the amount of money available from the offender or the amount the city is likely to recover in the civil action, taking into account the resources required to pursue the civil action, and that the facts and circumstances of the events giving rise to the claim, taken as a whole, indicate that the amount offered in compromise is fair and reasonable. Using the foregoing standards, in an appropriate case, the city manager may abandon a claim.

~~(d) *Criminal remedies.* Except for provisions, if any, of this division that regulate the operation or parking of motor vehicles, each violation of this division, including the terms of a permit, is a misdemeanor punishable by a maximum fine of \$500.00.~~

(de) *Available remedies.* This division and the provisions of permits issued under this division may be enforced by an appropriate equitable remedy, including abatement orders and mandatory or prohibitory injunctions, issuing from a court of competent jurisdiction. The general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law. In applying section 1-9(e), the city council intends that termination and revocation of a permit be considered to be remedies.

Section 232. City Code Section 66-286 shall be amended to add the underlined language where noted below:

“Sec. 66-286. Operation of vehicles in bus transfer area driveway prohibited.

It shall be unlawful for any person to operate a motor vehicle in the bus transfer area driveways between Main Street and Morgan Street; provided, however, this section shall not apply to: (1) buses operated by or on the behalf of the city; (2) emergency vehicles, including police, fire, ambulance and wrecker vehicles; and (3) street maintenance and similar service vehicles owned and operated by the city. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 233. City Code Section 66-309 shall be amended to add the underlined language where noted below:

“Sec. 66-309. Equipment and safety requirements.

(a) Bicycles, electric assisted bicycles and motorized scooters shall comply with the applicable vehicle equipment and safety requirements of G.S. ch. 20.

(b) Anyone riding upon a bicycle, electric assisted bicycle, or motorized scooter shall not attach the vehicle or himself or herself to any other moving vehicle upon any roadway.

(c) When using shared-use paths, a person riding a bicycle shall yield the right-of-way to pedestrians.

(d) In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 234. City Code Section 66-310 shall be amended to add the underlined language where noted below:

“Sec. 66-310. Traffic regulations and parking.

(a) Any person operating a bicycle, electric assisted bicycle or motorized scooter on a public right-of-way shall obey the instructions of official traffic signals, signs, and other control devices applicable to the driver of a motorized vehicle, except those which by their nature can have no application to a bicycle, electric assisted bicycle or motorized scooter.

(b) Right-of-way at intersections shall be determined by North Carolina General Statutes whenever applicable. Bicycles, electric assisted bicycles and motorized scooters using bike lanes have the right-of-way over vehicles making turning movements from parallel lanes of a roadway.

(c) Bicycles, electric assisted bicycles and motorized scooters may be walked subject to all provisions of law applicable to pedestrians.

(d) The operator of a bicycle, electric assisted bicycle or a motorized scooter emerging from an alley, driveway, or building shall, upon approaching a sidewalk, yield right-of-way to all pedestrians in close proximity on such sidewalk, and upon entering a roadway shall yield right-of-way to all approaching motorized vehicles whose movement would be affected thereby.

(e) Whenever a lane of traffic on any roadway is indicated by pavement marking or by a sign as being assigned as a bike lane, it is unlawful for the driver of a motorized vehicle, except electric assisted bicycles or motorized scooters, to occupy such lane for moving or parking, except that a driver may cross such lane to make a lawful turning movement, yielding the right-of-way to riders of bicycles, electric assisted bicycles or motorized scooters occupying such lane.

(f) It is prohibited for an operator of a bicycle, electric assisted bicycle or a motorized scooter to park his or her vehicle in the following locations:

- (1) Directly on a pedestrian sidewalk unless there is an unobstructed pedestrian corridor remaining of at least four feet, or the vehicle is parked inside a designated, marked motorized scooter or bicycle parking area;
- (2) In a manner that blocks American with Disabilities Act (ADA) accommodations, including curb ramps, braille signs, railings and signal push buttons;
- (3) In front of, or blocking transit areas, including bus stops, shelters, passenger waiting areas, and bus layover and staging zones, except within areas approved by the city or public transit authority; or
- (4) In front of, or blocking street furniture, loading zones, entryways, driveways, alleys, fire hydrants, or crosswalks; or city bicycle racks, as to motorized scooters only.

(g) In addition to any other remedy available in the Code, violation of subsection (a) through (e) is an infraction. Violation of subsection (f) shall subject the offender to a civil penalty in accordance with Section 1-9.”

Section 235. City Code Section 66-311 shall be amended to add the underlined language where noted below:

“Sec. 66-311. Duty of parents or guardians.

The parent of any minor child and the guardian of any minor ward shall not authorize or knowingly permit any minor child or ward to violate any provisions of this division. In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 236. City Code Section 66-312 shall be amended to add the underlined language where noted below:

“Sec. 66-312. Motorized vehicles and shared-use paths.

(a) No person shall drive any motorized vehicle upon any shared-use path except at public street intersections or to enter a driveway. No person shall drive across a shared-use path as permitted by this section except after yielding right-of-way to all bicycles and pedestrians on the path.

(b) This section shall not apply to law enforcement officers or city maintenance staff while in discharge of their official duties.

(c) In addition to any other remedy available in the Code, violation of this section is an infraction.”

Section 237. City Code Section 66-321 shall be amended to add the underlined language where noted below:

“Sec. 66-321. Clinging to moving vehicles.

Any person riding upon any skateboard or any non-motorized recreation vehicle shall not attach the same or himself or herself to any moving vehicle upon any roadway. In addition to any other remedy available in the Code, violation of this section is an infraction and the person found responsible for such infraction shall pay a penalty not to exceed \$50.00.”

Section 238. City Code Section 66-322 shall be amended to add the underlined language where noted below:

“Sec. 66-322. Use of skateboards.

No person upon a skateboard or similar device shall go upon any roadway, except while crossing the street on a crosswalk and except upon streets set aside as play streets when and as authorized by the provisions of this Code or other ordinances of the city. In addition to any other remedy available in the Code, violation of this section is an infraction and the person found responsible for such infraction shall pay a penalty not to exceed \$50.00.”

Section 239. City Code Section 66-323 shall be amended to add the underlined language where noted below:

“Sec. 66-323. Skateboard and freestyle bicycling parks.

(a) Any person participating in, observing, or assisting in a hazardous recreational activity in a city skateboard or freestyle bicycling park assumes the known and inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself or other persons or property that result from these activities.

(b) Any person participating in a hazardous recreational activity in a city skateboard or freestyle bicycling park is required to be wearing a helmet, elbow pads, and knee pads.

(c) Any person participating in a hazardous recreational activity is responsible for doing each of the following:

- (1) Acting within the limits of his or her ability and the purpose and design of the equipment used;
- (2) Maintaining control of his or her person and the equipment used; and
- (3) Refraining from acting in any manner that may cause or contribute to death or injury of himself or herself or other persons.

(d) Any person participating in a hazardous recreational activity in a city skateboard or freestyle bicycling park is required to obey posted regulatory signs; failure to do so will be subject to citation under this division.

(e) In addition to any other remedy available in the Code, violation of this section is an infraction and the person found responsible for such infraction shall pay a penalty not to exceed \$50.00.”

Section 240. City Code Sec. 66-325. Enforcement. is repealed.

Section 241. City Code Section 66-346 shall be amended to add the underlined language where noted below:

“Sec. 66-346. Who may place ticket in or upon vehicle.

It shall be unlawful for any person, except a law enforcement officer or other person authorized by the city manager to enforce parking ordinances, to place or cause to be placed any traffic law violation ticket, traffic law violation notice, traffic law violation citation, or any other such notice relating to traffic law violation issued by the city or its police department, on or in any motor or other vehicle in the city. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 242. City Code Section 66-347 shall be amended to add the underlined language where noted below:

“Sec. 66-347. Removal of ticket from vehicles.

It shall be unlawful for any person to remove from any vehicle a traffic law violation ticket, traffic law violation notice, traffic law violation citation, or any other notice relating to traffic law violation in the city after such ticket, notice or citation has been placed on or in such vehicle by a police officer or other person authorized by the city manager to enforce parking ordinances, except for the purpose of answering such notice or citation as required in such notice or citation. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 243. City Code Section 66-348 shall be amended to add the underlined language where noted below:

“Sec. 66-348. Altering, erasing or varying language of ticket.

It shall be unlawful for any person to alter, change, erase, substitute, add to, or in any other way vary any language, symbol or notation appearing on any such traffic law violation ticket, notice or citation after the same has been placed in or on a vehicle by a police officer or other person authorized by the city manager to enforce parking ordinances. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 244. City Code Section 66-375 shall be amended to add the underlined language where noted below:

“Sec. 66-375. Immobilization of vehicles.

(a) The city manager may immobilize by the use of wheel locks and tow and impound any vehicle which is illegally parked in violation of article IV and for which there are three or more outstanding, unpaid, and overdue parking tickets for a period of 90 days. For the purpose of determining whether an illegally-parked vehicle has had issued against it three or more outstanding, unpaid, and overdue parking tickets for a period of 90 days, it shall be sufficient if the license plate number of the illegally-parked vehicle and the license plate number of the vehicle having received the tickets are the same.

(b) If a wheel lock is attached to a vehicle, a notice shall be affixed to the windshield or other part of the vehicle so as to be readily visible. The notice shall warn that the vehicle has been immobilized and that any attempt to move the vehicle may result in damage to the vehicle. The city shall not be responsible for any damage to an immobilized, illegally-parked vehicle resulting from unauthorized attempts to free or move the vehicle. An immobilization fee set by the city council shall be charged for the removal of the wheel lock. The notice shall include the amount of the immobilization fee and the total amount of civil penalties for parking tickets which are overdue and unpaid and attributable to such vehicle. The hours, address, and telephone number of the designated agent where the vehicle owner may pay the charges to have the wheel lock removed shall also appear on the notice.

(c) If civil penalties due and an immobilization fee as herein provided are not paid, or satisfactory arrangements in lieu of payment are not made within 24 hours of attachment of the wheel lock, such vehicle may be towed to and impounded in any public or private impoundment

lot. If a private contractor tows and stores the vehicle, he or she may impose against the vehicle his or her customary fees and charges for such services. Once a vehicle has been impounded, the department designated by the city manager shall mail a notice of impoundment to the registered owner and lienholder, if known, at the address reported to the city by the state division of motor vehicles.

(d) Upon payment of all civil penalties and overdue and unpaid parking tickets issued for the vehicle and of all other charges authorized by this section, including immobilization, towing, and impoundment fees, the vehicle shall be released to the owner or any other person legally entitled to claim possession of the vehicle.

(e) The owner or other person entitled to possession of the vehicle which has been immobilized pursuant to this section, may submit a written request for a hearing to the person designated by the city manager, by certified mail or personal delivery within seven calendar days of receipt of the notice provided for in subsection (c) of this section. If a hearing is requested, a statement shall be sent by the city manager to the requesting party to inform him or her of the time and place of the hearing, of the basis of the vehicle's immobilization and impoundment, of the rules governing conduct of the hearing, and of the right to present evidence as to why the vehicle should not have been immobilized or towed, and of the right to be represented by counsel. The hearing officer appointed by the city manager shall prepare a written report of his or her findings within three days of the hearing. The report shall state his or her conclusion as to whether the vehicle was properly immobilized and towed, and the reasons underlying his or her conclusion. If it is concluded that the vehicle was improperly immobilized or towed, then any improper charges shall be canceled, or, if paid, rebated. The city shall not be responsible for any consequential damages or costs the vehicle owner incurs in conjunction with the hearing process.

(f) It shall be unlawful for anyone to remove from a vehicle a wheel lock placed pursuant to this section, or to remove from impoundment any vehicle placed therein pursuant to this section, without all civil penalties and applicable charges having first been paid or an approved payment plan having been made. In addition to any other remedy available in the Code, violation of this subsection (f) is a misdemeanor.

(g) The city manager is authorized to establish guidelines to adjust the amount of civil penalties imposed pursuant to this section, to promote the resolution of any claim against a person with ten or more outstanding delinquent parking tickets.”

Section 245. City Code Section 66-433 shall be amended to add the underlined language where noted below:

“Sec. 66-433. Interference.

When a public assembly or parade is held on a closed street pursuant to a permit, it is unlawful to unreasonably hamper, obstruct, impede, or interfere with the public assembly or parade, or with any person, vehicle, or animal participating or used in the public assembly or parade. In addition to any other remedy available in the Code, violation of this section is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 246. City Code Section 66-434 shall be amended to add the underlined language where noted below:

“Sec. 66-434. Reservation of rights in city; other ordinances and N.C. DOT not limited.

(a) To the extent directed by the city, any person allowed to do any activity by this article or by a permit shall promptly cease the activity and remove all property that the city deems to interfere with the purposes for which the direction is given. The city reserves the right to rescind in whole or in part any order and to require any activity allowed by this article or by a permit to cease in whole or in part. The city may exercise the authority listed in this subsection for any purpose, including:

- (1) To allow for construction, maintenance, or repair of any public street, sidewalk, utility, building, or facility;
- (2) To allow for use of a public street, sidewalk, utility, building, or facility in connection with parades, festivals, or other events;
- (3) To remedy a nuisance; or
- (4) To protect or promote the public health, safety, or welfare.

(b) In case of emergency, danger to property, or detriment, danger, or hazard to public health, safety, or welfare, the city manager may, orally or in writing, direct any person allowed to do any activity by this article or by a permit to immediately move such distance as the city manager specifies, and to cease acts determined by the city manager to contribute to the emergency, danger, detriment, or hazard. Upon receiving such direction, the individual shall comply. When such a direction is not complied with, the city manager may cause objects in violation of the direction to be removed, disposed of, or both, and the cost of such actions shall be borne by the offender. This subsection shall not be construed to limit subsection (a).

(c) The police may authorize any person to drive a vehicle on the closed street in order to exit the area, if the vehicle is parked in a location from which the only reasonable exit is over the closed street. The police may authorize a vehicle to enter the closed street in order to park in a space designated with a sign pursuant to G.S. 20-37.6(d) for handicapped persons.

(d) Nothing in this division shall be construed to limit any other ordinance, including section 66-108 (driving over curbs, gutters or sidewalks at places other than those constructed and designed for traffic), section 66-109 (driving on sidewalk), and those imposing parking restrictions. Nothing in this division shall be construed to limit the authority of the N.C. Department of Transportation over rights-of-way under its jurisdiction.

(e) The principle that the expression of one thing is the exclusion of another is not to be used to construe this division to grant to the public any right to use property owned or controlled by the city.

(f) In addition to any other remedy available in the Code, failure to cease any activity or acts in whole or in part, to remove any property or objects, or to follow the directives of the city manager or the manager’s designee, in violation of subsections (a) or (b), is a misdemeanor punishable by a maximum fine of \$500.00.”

Section 247. City Code Section 66-436 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 66-436. Penalties for violations.

(a) *Assessment of civil penalties.* The city manager shall assess civil penalties for violation of this article, including the terms of a permit. The city manager shall give the offender written notice of the nature of the violation and the amount of the civil penalty. The notice shall be served by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the city manager. The civil penalty shall be \$200.00 per violation plus the costs incurred by the city resulting from the violation, including costs of removing litter.

(b) *Review of assessment of civil penalties.* Any person who has been assessed a civil penalty under this article may have that assessment reviewed by filing a written request in the office of the city manager within ten days of the date of service of the notice of the civil penalty. A person designated by the city manager for this purpose who is neither the person who assessed the civil penalty nor that person's subordinate shall be named as the hearing officer to conduct a hearing in order to review the assessment. The city manager shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The person assessed the penalty and the city manager may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request review within the time and in the manner provided for in this subsection constitutes a waiver of the right of review.

(c) *Collection of civil penalties.* If the offender does not pay the civil penalty within ten days after having been served with the notice of the civil penalty, the city manager may collect the civil penalties by causing to be commenced civil actions in the nature of debt. The city manager may compromise such claims, before or after commencement of the civil action, if the city manager finds there is a reasonable probability that the city will be unable to collect the entire amount of the claim, that the amount offered in compromise of the claim reasonably reflects either the amount of money available from the offender or the amount the city is likely to recover in the civil action, taking into account the resources required to pursue the civil action, and that the facts and circumstances of the events giving rise to the claim, taken as a whole, indicate that the amount offered in compromise is fair and reasonable. Using the foregoing standards, in an appropriate case, the city manager may abandon a claim.

~~(d) *Criminal remedies.* Except for provisions, if any, of this article that regulate the operation or parking of motor vehicles, each violation of this article, including the terms of a permit, is a misdemeanor punishable by a maximum fine of \$500.00.~~

(de) *Available remedies.* This article and the provisions of permits issued under this article may be enforced by an appropriate equitable remedy, including abatement orders and mandatory or prohibitory injunctions, issuing from a court of competent jurisdiction. The general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law. In applying subsection 1-9(e), the city council intends that revocation of a permit be deemed to be a remedy.”

Section 248. City Code Section 70-1 shall be amended to add the underlined language where noted below:

“Sec. 70-1. Damaging public water and/or sewer system, defacing property.

(a) It shall be unlawful for any person maliciously, willfully, or negligently to break, damage, destroy, uncover, deface or tamper with the public water and/or sewer system. In addition to any other remedies available by law, such person shall indemnify the city for any damages or injury to the water and/or sewer system for its construction, maintenance or repair.

(b) A fee set from time to time by the city council shall be imposed on any person who alters, tampers with, or bypasses a water meter or tampers with a water meter lock. The fee may include reimbursement for costs of materials and labor for replacement or repair. Any water meter or water meter lock found to have been altered, tampered with, or bypassed in a manner (i) that would cause such meter to inaccurately measure and register the water consumed, (ii) that would cause the water to be diverted from the recording apparatus of the meter, or (iii) that would allow the flow of water to a location whose service had been disconnected by the city due to failure to make payment, shall be prima facie evidence that the alteration, tampering, and bypassing were done by the person in whose name such meter is installed and the persons using or receiving the benefits of such unmetered, unregistered, or diverted water, all of whom shall be jointly and severally liable. Assessment of fees under this subsection does not affect liability for other charges, penalties, and consequences imposed for the same acts.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 249. City Code Section 70-23 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 70-23. Use of fire hydrants.

Fire hydrants shall be used predominantly by the fire department for the purpose of providing fire protection. Other city departments shall be permitted to use fire hydrants on a limited basis to undertake legitimate public purposes. Fire hydrants shall not be otherwise used for any purpose, unless written approval is received from the city. Persons who wish to use hydrants to provide water during the construction process or for other purposes shall apply to the city for a permit for such use. The city shall establish policies regarding such use. These policies may, amongst other things, require that only city equipment be used to meter the water used, and to prevent the backflow of water into the system, and that users employ other special equipment and/or use certain practices in opening and closing hydrants, attaching and detaching equipment, and moving equipment to other hydrants. These policies may establish reasonable deposits for use of city equipment, which shall not exceed an amount set by the city council. Violation of the city's policies is considered a violation of the City Code which, in addition to any other remedy available in the Code, is a misdemeanor. ~~and may be remedied through any means available for violations of the City Code.”~~

Section 250. City Code Section 70-25 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 70-25. Resale of water and/or sewer service.

No water and/or sewer customer shall supply or resell water and/or sewer service from the public water and/or sewer system. Notwithstanding this prohibition, owners of a residential apartment complex where submeters have been installed may charge tenants for water and/or sewer service for the purpose of fairly allocating the cost of such service to each dwelling unit subject to the conditions set forth below. For purposes of this section, a residential apartment complex is defined as premises not separated by property owned by others where one or more buildings under common ownership comprising 15 or more apartments are available for rent by residential tenants.

- (1) The rate charged shall be no greater than that charged by the city. Any administrative or service charge billed by the city may be apportioned among the tenant bills. Additional apartment owner service or administrative charges may be added to the amount billed by the city in accordance with the state utilities commission regulations;
- (2) The owner shall be in compliance with all the regulations of the city and other governmental agencies which may have jurisdiction, including, but not limited to, the state public utilities commission and the state division of environmental health;
- (3) The owner shall notify the city manager or his or her designee in writing that the structure will be submetered and indicate the expected date of the initial billing of tenants;
- (4) The tenant billing cycle shall coincide with the city's billing cycle. The owner shall maintain the following records on the site for inspection during reasonable business hours by the city manager or his or her designee and the tenants:
 - a. The billing from the city to the owner for the current month and the 12 preceding months;
 - b. The calculation of the average cost per 100 cubic feet or per 1,000 gallons for the current month and the 12 preceding months;
 - c. All submeter readings and tenant billings for the current month and the 12 preceding months;
 - d. All sub-meter test results for the current month and the 12 preceding months.
- (5) All rental agreements between the owner and the tenants shall clearly state that the dwelling unit is submetered, that bills will be issued based on such metered charges, that water and/or sewer charges based on water consumption for all common areas and common facilities will be the responsibility of the owner and not the tenant, and that any disputes relating to the computation of the tenant's bill and the accuracy of the submetering device will be between the tenant and the owner;
- (6) The owner shall not terminate a tenant's water and/or sewer service for failure to pay tenant's water and/or sewer bill.

In addition to any other remedy available in the Code, Failure to comply with the requirements of this section is shall be a misdemeanor violation of this chapter, subject to all remedies authorized by law, and shall also be grounds for termination of the right to bill tenants in accordance with submetered charges.”

Section 251. City Code Section 70-27 shall be amended to add the underlined language where noted below:

“Sec. 70-27. Water pressure reducing valves.

(a) Any water service consumer of the water system of the city whose water service has a water pressure which equals or exceeds 80 pounds per square inch is required to install and maintain an adequate pressure reducing valve on the building site of the meter. No connection to the water system shall be made without installing the pressure reducing valve herein required, and in no event shall the city be responsible for any liability for damages which might result from the failure to install and maintain such pressure reducing valve.

(b) The provisions of this section shall apply to existing as well as future construction.

(c) In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 252. City Code Section 70-511 shall be amended to add the underlined language where noted below:

“Sec. 70-511. Illicit discharges; containment of spills and discharges; plans to prevent discharges.

(a) *Prohibition.* The discharge, emission, disposal, pouring, or pumping, directly or indirectly, to the drainage system of any liquid, solid, gas, or other substance, other than stormwater, is an illicit discharge and is prohibited, except as allowed in section 70-513. This prohibition also includes airborne emissions where such emissions deposit pollutants into the drainage system.

(b) *Containment of discharges and spills; notice.* Persons responsible for property where an illicit discharge or a spill that may enter the drainage system has occurred shall immediately take appropriate and timely action to contain the discharge or spill. Such person shall notify the director within one working day and comply with all other legally required reporting requirements.

(c) *Plans to prevent illicit discharges.*

(1) Where the location or manner of storage of pollutants on property may cause a significant illicit discharge, or where an illicit discharge has previously occurred on property, the director may require that a responsible person for such property:

- a. Develop and maintain BMPs meeting guidelines;
- b. Apply for and follow a local permit; and
- c. Develop, submit for approval, and follow an SWPPP.

(2) In determining whether to impose such additional requirements the director shall consider:

- a. The history of the property;
- b. The likelihood of illicit discharges without additional measures; and
- c. The impact of such discharges.

(3) A permit or plan required under this section is a regulatory requirement and not a penalty.

(d) Available remedies. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 253. City Code Section 70-512 shall be amended to add the underlined language where noted below:

“Sec. 70-512. Illicit connections.

(a) *Prohibition.* Construction, creation, or maintenance of an illicit connection is prohibited, except that maintenance during a grace period may be allowed as described in subsection (c) of this section.

(b) *Examples of illicit connections.* Examples of illicit connections include, but are not limited to, pipes or ditches that carry process wastewater or wash water to the MS4 or to watercourses, including but not limited to indoor drains whether or not previously allowed under the building code.

(c) *Removal; grace period.* Illicit connections that were legal prior to passage of the ordinance from which this article is derived may continue to exist until June 1, 2007, at which point they must be removed. However, where the connection has the potential to discharge hazardous substances, the connection shall be removed immediately unless an extension is granted. The director may allow an extension of up to three months for removal of such illicit connection upon a showing of substantial hardship and minimal risk to the public from the delay.

(d) Available remedies. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 254. City Code Section 70-514 shall be amended to add the underlined language where noted below:

“Sec. 70-514. Demonstration of compliance under NPDES permits, SWPPPs, BMPs, general NPDES permits, or similar authorizations.

(a) *Required documentation, on-site record maintenance.* Properties subject to a plan to control discharges to the drainage system under NPDES permits, SWPPPs, BMPs, or local permits must demonstrate compliance. The following records shall be maintained on site and shall be available for inspection and copying by city representatives upon request.

- (1) A copy of the NPDES permit, state or EPA-issued order, SWPPP, or notice of coverage, as applicable, issued for the premises, activity or operation;
- (2) If applicable, a copy of the NPDES permit application, NOI to comply with a general NPDES permit, application for an sedimentation and erosion control permit, or similar application;
- (3) Any monitoring plan required as a provision of a permit, SWPPP, or BMP;
- (4) All inspection and monitoring data collected for a three-year period, or such shorter period as the property has been required to collect such data.

(b) *Noncompliance.* Failure to demonstrate full compliance with a permit, SWPPP, BMP, or other legal authorization, and failure to obtain a permit required under applicable law, shall,

among other things, result in a discharge being considered an illicit discharge under section 70-511.

(c) Available remedies. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 255. City Code Section 70-515 shall be amended to add the underlined language where noted below:

“Sec. 70-515. Pollution prevention requirements for automotive activities.

(a) *Secondary containment; spill cleanup kits.* Motor oil, antifreeze, other automotive fluids, and other petroleum products that are stored outdoors shall have secondary containment and shall be stored under a covered area. Gas stations, other fuel-dispensing facilities, nonresidential properties on which ten or more gallons of petroleum or automotive products are stored, and tow-truck operators shall maintain a spill clean-up kit of a type and size to meet guidelines.

(b) *Auto towing, maintenance, service, salvage.* Properties that are used for storage of towed vehicles, vehicle maintenance, vehicle service, or salvage of vehicle parts from vehicles shall have:

- (1) One or more spill clean-up kits of a type and size to meet guidelines;
- (2) Secondary containment and a covered storage area for substances covered under subsection (a) of this section;
- (3) Covered bays in which all vehicle service or maintenance shall be conducted, except for emergency road service, glass repair, and electrical service, such as battery replacement; and
- (4) Storage for vehicle parts, both new and used, so that the parts are not exposed to stormwater runoff or precipitation.

(c) *Spills/leaks.* Persons responsible for property where a spill or leak of automotive or petroleum products has occurred shall clean up the spill or leak and report it in accordance with section 70-511(b).

(d) *NPDES permit.* Demonstration under section 70-514 of compliance with a valid NPDES permit that specifically addresses an activity controlled under this section, and imposes different requirements than those stated in this section, shall be deemed compliance with this section.

(e) Available remedies. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 256. City Code Section 70-516 shall be amended to add the underlined language where noted below:

“Sec. 70-516. Stormwater pollution prevention plans (SWPPPs) for storage of salvaged vehicles.

(a) *Submission of SWPPP.* Storage of ten or more junked, salvaged, or unlicensed vehicles (hereafter "salvage vehicles") outside, such that they are exposed to precipitation, shall require

an SWPPP if the facility does not possess an NPDES permit for such activity. The SWPPP shall be developed and submitted to the director in accordance with the schedule below.

- (1) By September 1, 2007, for facilities with 30 or more salvage vehicles; or
- (2) By February 1, 2008, for facilities with more than ten but less than 30 salvage vehicles.

(b) *Content of SWPPP.* The SWPPP shall be in compliance with guidelines and shall prevent the discharge of used motor oil and other petroleum products, antifreeze, solvents, other automotive fluids, brake dust, sediment from land disturbance, and other pollutants. The SWPPP shall include the following and such other information as may be required in guidelines:

- (1) A map showing the general location of the facility, and a separate site map, drawn to scale, showing location of structures, drainage features on the property, salvage autos, and vehicle parts and equipment cleaning areas;
- (2) A description of storage practices, loading and unloading activities, outdoor process areas, activities that generate dust or particulates, and waste disposal practices;
- (3) A list of significant spills or leaks of pollutants that have occurred at the site during the three previous years and any corrective actions taken in response;
- (4) Methods, in accordance with guidelines, to reduce risk of stormwater pollution, such as secondary containment, and BMPs; and
- (5) Monitoring schedule and method for documenting compliance with the SWPPP.

(c) *Alternative SWPPP.* A SWPPP developed pursuant to a valid NPDES general or individual permit for stormwater discharge shall be deemed compliant with this section provided compliance is demonstrated under 70-514.

(d) *Maintenance of SWPPP.* The SWPPP shall be maintained on site, and shall be readily available for review by the city upon request.

(e) *Available remedies.* In addition to any other remedy available in the Code, violation of this section is a misdemeanor.

Section 257. City Code Section 70-517 shall be amended to add the underlined language where noted below:

“Sec. 70-517. Pollution prevention requirements for hazardous substances.

Hazardous substances that are stored outdoors shall have secondary containment and shall be stored in a covered area. Where the volume or location of hazardous substances presents a risk of pollution to the drainage system, the director may require a person to submit an SWPPP or application for a local permit for approval, and to follow such SWPPP or permit. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 258. City Code Section 70-518 shall be amended to add the underlined language where noted below:

“Sec. 70-518. Spills and releases of pollutants.

(a) *Containment.* Persons responsible for a spill or other release of pollutants upon the roads, highways, or in the right-of-way shall take appropriate and timely action to contain and

clean up the spilled material to prevent it from entering any drainage system. Appropriate action may include contracting with a third party that is licensed by the state to handle and dispose of the spilled material.

(b) *Report.* A person responsible for a spill that is subject to G.S. 143-215.75 et seq. or other applicable law shall immediately report the spill to the Durham City-County Emergency Management System ("EMS"). The Durham City-County EMS shall report all spills, with details as to location and nature of the spill, within one working day to the director.

(c) *Available remedies.* In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 259. City Code Section 70-525 shall be amended to add the underlined language where noted below:

"Sec. 70-525. Authority to enter, inspect, and monitor; routine inspection program.

(a) *Right to inspect.* City representatives, upon presentation of credentials and other documents as may be required by law, may enter public or private properties at all reasonable times to inspect, investigate, or monitor activities and conditions subject to this article. If consent has not been given through a permit or other similar authorization, or a person able to give consent has not consented to entry or inspection, or entry is not otherwise authorized, the director shall obtain an administrative search warrant from a magistrate as provided under G.S. 15-27.2. The director shall show either that the property is subject to a routine inspection program and inspection under such program is due, or that probable cause exists to inspect.

(b) *Inspection activities.* City representatives are authorized to do the following as necessary to determine compliance or noncompliance with this article:

- (1) Observe, inspect, measure, sample, test, and monitor;
- (2) Place devices to remain on site for runoff or discharge sampling, monitoring, flow measuring, or metering;
- (3) Inspect, copy, or examine any records, reports, plans, test results or other information; and
- (4) Photograph or video record property conditions, activities, potential causes of pollution, and potential violations.

(c) *Confidential information.* City representatives shall treat as confidential information the composition of materials and substances documented during an investigation if a claim is timely made and substantiated that such substances are trade secrets.

(d) *Obstruction.* No person shall obstruct, hamper, or interfere with a city representative carrying out official duties. Upon presentation of credentials by city inspectors, necessary arrangements shall be made to allow immediate access onto premises or into an area protected by security measures. Any obstruction to the safe and easy access to property, a facility or enclosure on property, or to monitoring devices shall immediately be removed. Unreasonable delays in providing safe and reasonable access or removing obstructions shall be a violation of this article.

(e) *Routine inspection program.* The director may establish, though guidelines, a routine inspection program for properties, businesses, or other activities in order to gather information regarding stormwater, pollution of the drainage system, and compliance with this article. The

inspection cycles for categories of properties, businesses, or activities may differ depending on location, proximity to particular streams or other waters of the state, prior history, type of business or activity conducted on site, size of facility, nature of substances on site, or other parameters related to the objectives of this article.

(f) *Available remedies.* In addition to any other remedy available in the Code, violation of this subsection (d) is a misdemeanor."

Section 260. City Code Section 70-531 shall be amended to add the underlined language where noted below:

"Sec. 70-531. Maintaining drainage systems; permitted alterations.

(a) *Maintaining clear drainage system.* All persons shall keep and maintain the drainage system, both surface and underground, located on their property free from obstructions, trash, and debris.

(b) *Obstructing drainage system.* No person shall deposit, or allow or cause to be deposited, into any part of the drainage system, including, but not limited to, street gutters, catchbasins, ditches, pipes, and streams, any material or substance that will cause or contribute to blockage or reduced discharge of the drainage system, or that will damage the drainage system. This includes, but is not limited to, refuse, rubbish, construction waste, leaves, landscaping debris, garbage, and dirt and sediment.

(c) *Upset.* The prohibition above shall not apply to NPDES-authorized discharges of sediment that result from an upset as defined in the applicable NPDES permit.

(d) *Permitted activities.* The provisions above do not prohibit the construction, reconstruction or alteration of drainage systems and BMPs that comply with city design standards and sound engineering practices where construction is in accordance with section 70-533, or the applicable sedimentation and erosion control program, and where the work employs adequate sediment and erosion control practices.

(e) *Available remedies.* In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 261. City Code Section 70-532 shall be amended to add the underlined language where noted below:

"Sec. 70-532. Obstructing the free flow of water.

No person shall construct, install or maintain any stormwater or drainage system in such a manner as to obstruct or impede the free flow of water. This section does not apply to the construction, reconstruction or alteration of drainage systems and BMPs in compliance with city design standards and sound engineering practices and for which a permit or other approval has been secured from the city's stormwater services division. In addition to any other remedy available in the Code, violation of this section is a misdemeanor."

Section 262. City Code Section 70-533 shall be amended to add the underlined language where noted below:

“Sec. 70-533. Permit requirements for construction; fees.

(a) *Approvals for BMPs, construction connecting to MS4.* All construction of, or nonroutine maintenance work on a BMP, or other drainage feature that is intended to prevent pollutants from entering the drainage system, or a natural or constructed portion of the drainage system that directly connects to the MS4 or to the waters of the state shall require a permit or other approval from the city.

(b) *Guidelines.*

(1) Guidelines may require that:

- a. Permits or approvals be obtained for other work on the drainage system;
- b. Certain work is exempt from permitting or approvals, based on:
 1. The nature of the activity;
 2. The size of the infrastructure;
 3. Other permits that are in place; and
 4. Other criteria relevant to drainage system impacts; and
- c. Mandated practices for work on the drainage system be followed in lieu of obtaining a permit or approval.

(2) Guidelines may also specify the information required to be submitted for a permit or approval, or for a determination that a permit or approval is not required.

(c) *Fees.* The city shall establish appropriate fees to recover the costs of review of applications and issuance of permits and approvals authorized in this division, and for the monitoring of BMPs and other drainage features that discharge directly or indirectly to the MS4. The city may also require security instruments or other financial guarantees, or payment into a fund in lieu of such guarantees, to ensure the continuous upkeep and/or reconstruction of city-required BMPs or other pollution prevention features.

(d) *Available remedies.* In addition to any other remedy available in the Code, failure to obtain a permit or approvals as required by this section is a misdemeanor.”

Section 263. City Code Section 70-540 shall be amended to add the underlined language, and delete the stricken through language, where noted below:

“Sec. 70-540. Remedies and penalties.

Remedies available for enforcement of this article, and penalties for its violation, include, but are not limited to, those described in the following subsections. Pursuit of certain remedies and penalties requires compliance with the procedures specified in section 70-541.

(1) *Administrative remedies.*

- a. *Show cause meeting.* The director may have a meeting with the violator prior to taking any enforcement action under this article. The violator shall receive notice of such meeting consistent with procedures in section 70-541, and shall have an opportunity to be heard.

- b. *Consent orders.* The director may enter into consent orders, assurances of voluntary compliance, or other similar agreements with a violator. Such agreements shall include, but not be limited to, specific action to be taken by the violator to correct the violation within the time period established in the order. A consent order may also include a mitigation project undertaken to improve environmental quality of the drainage system in the event that the director and the violator agree on such project as an additional compliance measure to generally remediate the impacts of a violation.
- c. *Administrative orders.* The director may direct a violator to comply with this article through an administrative order which sets forth specific actions that must be taken and a timetable for taking them.
- d. *Mandatory security for compliance.* The director may require a violator to post a bond or provide other financial security of a type, form, and amount as specified in the discretion of the director, to assure performance of any actions required to bring a property into compliance with this article.
- e. *Termination of utility service.* Where it appears that the continuation of water and/or sewer service may contribute to a violation of this article, as, for example, an illicit connection, utility service may be terminated.
- f. *Costs added to utility bill.* The costs of any action taken by the city to investigate and remediate a violation of this article may be added to the violator's utility bill, and, if unpaid, may result in termination of utility service as otherwise provided in this Code.
- g. *Termination of access.* Any property on which illicit discharges to the MS4 have occurred may have their access to the MS4 terminated if such termination would contribute to the likelihood that the illicit discharge would be reduced or abated.
- h. *Withholding of inspections, permits, certificate of occupancy or other approvals.* Building inspections; permits for development or other improvements; requests for plan approval for zoning, subdivision, other development or construction; and certificates of occupancy may be withheld or conditioned upon compliance with this article until a violator with ownership or management of the property for which permits or approvals are sought has fully complied with this article and all actions taken pursuant to this article.

(2) *Civil penalties.*

- a. *Assessment of penalty.* The director may assess civil penalties for violations of this article after providing the violator notice and opportunity to respond described in the procedures set forth in section 70-541. Such penalty, if unpaid within 30 days of notice to the violator that payment is due, may be collected through a civil action in the nature of debt as described in subsection (3) of this section. The director shall apply the standards and criteria set forth in subsections (2)b through (2)d of this section in determining the amount of the penalty.
- b. *Penalty amounts for properties used for nonresidential purposes.* A maximum base penalty of up to \$10,000.00 per violation may be assessed for violations occurring on properties used, in whole or in part, for nonresidential purposes or containing nonresidential uses, subject to the following limitations and additions:

1. An additional \$10.00 per gallon may be added to the base amount for an illicit discharge to the drainage system that exceeds 1,000 gallons;
 2. An additional 25 percent may be added to the base amount for repeat violations; and
 3. First-time violations on property, or by a person, shall be limited to \$2,000.00 per violation unless the property or person is an industrial activity subject to NPDES requirements.
- c. *Penalty amounts for properties used for residential purposes.* A maximum base penalty of up to \$500.00 per violation may be assessed for violations occurring on properties used entirely for residential purposes, subject to the following limitations and additions:
1. Penalties for blockages of the drainage system shall be limited to \$100.00 per violation, except for multifamily residential properties, or when the blockage causes off-site impacts.
 2. The maximum base penalty may be doubled for repeat violations.
- d. *Criteria for assessing penalty.* In determining the amount of the penalty, the director shall consider the following factors in addition to any factors set forth in guidelines:
1. The degree and extent of harm to the environment, the public health, public property, and private property;
 2. The duration and gravity of the violation;
 3. The effect on ground or surface water quality or on air quality or on flood hazard;
 4. The cost of rectifying the damage;
 5. The amount of money saved by noncompliance;
 6. Knowledge of the requirements by the violator, and/or reasonable opportunity or obligation to obtain such knowledge;
 7. Whether the violation was willful;
 8. Actions taken by the violator to prevent or remediate the impacts;
 9. Whether the violation is a repeat violation; and
 10. The costs of enforcement to the city.

(3) *Judicial actions.*

- a. *Injunction, abatement.* The director may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and/or an order of abatement or other equitable remedy that requires, among other things, that action be taken on property to correct a violation. A violator who fails to comply may be cited for contempt, and the city may execute the order under G.S. 160A-175(e). A violator may also be subject to remedies available for a nuisance under G.S. 160A-193 or other law. Costs of prosecution and/or correction and of remediation of the violation may be assessed as a lien on the property upon which the violation has occurred, and collected as unpaid taxes, as provided by law.
- b. ~~*Criminal prosecution and penalties.* Violation of this article shall be a misdemeanor and is subject to the maximum fine permitted under state statutes.~~

~~Each day of the violation shall be a separate offense and may be punished by imposition of the maximum fine.~~

- be. *Collection of civil penalties.* Action may be instituted against the violator to recover any civil penalty that has not been paid within 30 days of the date the violator receives notice of the penalty.”

Section 264. City Code Section 70-542 shall be amended to add the underlined language where noted below:

“Sec. 70-542. Emergencies.

If delay in correcting a violation would seriously threaten the effective enforcement of this article or pose an immediate danger to the public health, safety, or welfare, or to the waters of the state, then the director may order the immediate cessation of the violation without utilizing the procedures described in section 70-541. Any person ordered to cease such violation or to remedy such violation shall do so immediately. The director may seek immediate enforcement through any remedy or penalty authorized in this article or other applicable law. In addition to any other remedy available in the Code, violation of this section is a misdemeanor.”

Section 265. Any City resolution or ordinance in conflict with these amendments is hereby repealed only to the extent of the conflict.

Section 266. This ordinance is effective upon adoption.