

CHAPTER 153: WATERSHED MANAGEMENT AND PROTECTION

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GENERAL PROVISIONS**§ 153.01 AUTHORITY AND ENACTMENT.**

The Legislature of the State of North Carolina has, in G.S. Ch. 160A, Article 8, § 174, General Ordinance Authority; and in G.S. Ch. 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The City Council does hereby ordain and enact into law the following chapter as the Watershed Protection Ordinance of the city.
(Ord. 93-09, passed 7-1-93)

§ 153.02 JURISDICTION.

The provisions of this chapter shall apply within the areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of the City of Belmont, North Carolina" ("the watershed map"), which is adopted simultaneously herewith. The watershed map and all explanatory matter contained thereon accompanies and is hereby made a part of this chapter. This chapter shall be permanently kept on file in the office of the City Clerk.
(Ord. 93-09, passed 7-1-93; Am. Ord. 08-17, passed 6-2-08; Am. Ord. 10-06, passed 3-1-10)

§ 153.03 EXCEPTIONS TO APPLICABILITY.

(A) Nothing contained herein shall repeal, modify, or amend any federal or state law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this chapter amend, modify, or restrict any provisions of the Code of Ordinances of the city; however, the adoption of this chapter shall and does amend any and all ordinances, resolutions, and regulations in effect in the city at the time of the adoption of this chapter that may be construed to impair or reduce the effectiveness of this chapter or to conflict with any of its provisions.

(B) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

(C) Existing development, as defined in this chapter, is not subject to the requirements of this chapter. Expansions to structures classified as existing development must meet the requirements of this chapter, however, the built-upon area of the existing development is not required to be included in the density calculations.

(D) A pre-existing lot owned prior to the effective date of this chapter, regardless of whether or not a vested right has been established, may be developed for single family residential purposes without being subject to the restrictions of this chapter. However, this exemption is not applicable to multiple contiguous lots under single ownership. See § 153.31(B)(2) regarding the recombination of existing lots. (Ord. 93-09, passed 7-1-93; Am. Ord. 99-09, passed 9-13-99)

§ 153.04 DEFINITIONS.

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

AGRICULTURAL USE. The use of waters for stock watering, irrigation, and other farm purposes.

ANIMAL UNIT. A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

BEST MANAGEMENT PRACTICES (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

BIORETENTION/BIOFILTRATION AREAS. Bioretention is a water quality practice that uses plants and soils for removal of pollutants from stormwater runoff. These areas are designed to create a forested type of environment that will capture stormwater runoff from a project area. Through the use of appropriate soils and plant species in the bioretention areas, pollutants are removed through infiltration and soil filtering and also through uptake by the plants and trees. These practices can be worked in with other landscaping features.

BUFFER. An undisturbed natural and vegetated area through which stormwater runoff flows in a diffused manner and provides for infiltration of the runoff and filtering of pollutants. A vegetated buffer shall have sufficient groundcover of trees, shrubs, natural grasses or perennials to control runoff and prevent erosion.

BUILDING. Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building.

BUILT-UPON AREA. Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

CLUSTER DEVELOPMENT. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes non-residential development as well as single-family residential subdivisions and multifamily developments that do not involve the subdivision of land.

COMPOSTING FACILITY. A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

CRITICAL AREA. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The **CRITICAL AREA** is defined as extending either ½ mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or ½ mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of ½ mile.

CUSTOMARY HOME OCCUPATIONS. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over 25% of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, etc.

DEVELOPMENT. Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

DISCHARGING LANDFILL. A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

DWELLING UNIT. A building, or portion thereof, providing complete and permanent living facilities for one family.

EXISTING DEVELOPMENT. Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this chapter based on at least one of the following criteria:

- (1) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- (2) Having an outstanding valid building permit as authorized by G.S. § 160A-385.1, or
- (3) Having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by G.S. § 160A-385.1.

EXISTING LOT (LOT OF RECORD). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter, or a lot which is part of an existing development which by historical records or pattern of use would reasonably be deemed to be a lot whether recorded or not.

EXTENDED DRY DETENTION. These dry ponds are similar to wet detention ponds, except that they are not designed to maintain a permanent pool of water. These measures are designed to detain small stormwater events for an extended period of time (2 to 5 days). Pollutant removal is through the sedimentation process. These devices are not capable of 85% Total Suspended Solids removal and must be used in combination with other types of stormwater management measures.

FAMILY. One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

HAZARDOUS MATERIAL. Any substance listed as such in: SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

INDUSTRIAL DEVELOPMENT. Any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

INFILTRATION PRACTICES. Infiltration practices may be basic structures or trenches that are designed to capture stormwater runoff and completely infiltrate it into the soil. These devices are limited to areas where the soil conditions are appropriate to allow for infiltration of the design storm.

LANDFILL. A facility for the disposal of solid waste on land in a sanitary manner in accordance with G.S. § 130A-9. For the purpose of this chapter, this term does not include composting facilities.

LOT. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

MAJOR VARIANCE. A variance that results in any one or more of the following:

- (1) The complete waiver of a management requirement;
- (2) The relaxation, by a factor of more than 10%, of any management requirement that takes the form of a numerical standard;

(3) The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.

NON-RESIDENTIAL DEVELOPMENT. All development other than residential development, agriculture and silviculture.

PLAT. A map or plan of a parcel of land which is to be, or has been subdivided.

PROTECTED AREA. The area adjoining and upstream of the critical area in a WS-IV water supply in which protection measures are required. The boundaries of the protected areas are defined as extending five miles upstream and draining to water supply reservoirs (measured from the normal pool elevation), or to the ridge line of the watershed (whichever comes first); or 10 miles upstream and draining to the intake located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first).

RESIDENTIAL DEVELOPMENT. Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary home occupations.

SAND FILTER SYSTEMS. Sand filter systems use sedimentation and filtration to remove pollutants from stormwater runoff. The basic design involves a sedimentation chamber that collects the stormwater flow and then distributes it over a second chamber that is filled with sand. A good portion of incoming sedimentation settles out in the first chamber; the sand chamber then traps fine sediment and sediment bound pollutants. Sand filter systems are limited by the amount of land area they can treat and are often very expensive to construct. These systems (i.e.: concrete structures) may be constructed below ground in a manner that allows vehicles to travel over them. This makes them very useful in highly urban areas without completely removing the use of the land area they occupy.

SINGLE-FAMILY RESIDENTIAL. Any development where:

- (1) No building contains more than one dwelling unit;
- (2) Every dwelling unit is on a separate lot; and
- (3) Where no lot contains more than one dwelling unit.

STORMWATER WETLANDS AREAS. Stormwater wetlands are constructed systems, not natural wetland areas. These systems function similarly to natural wetlands by removing pollutants through settling and vegetative uptake while also reducing stormwater flows. Extended detention wetlands are very similar to wet ponds except that the constructed wetlands are shallower and can potentially take up more land area than a wet pond. Pocket wetlands are smaller wetland areas than would usually be used in combination with other management measures.

STREAM. A stream is a body of water which has a continuous flow.

STREET (ROAD). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

STRUCTURE. Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

SUBDIVIDER. Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

SUBDIVISION. All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this chapter:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this chapter;
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this chapter;
- (5) The division of a tract into plots or lots used as a cemetery.

TOXIC SUBSTANCE. Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

VARIANCE. A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this chapter.

VEGETATIVE PRACTICES. Vegetation can be used to reduce velocity of stormwater flow and create areas that can infiltrate and filter stormwater runoff. Various types of vegetative practices can be built into any type of development activity. Buffers, grassed swales, and filter strips are examples of vegetative measures that can be used as stormwater management features. These types of measures do not, however, have very high pollutant removal capabilities and are usually used in conjunction with other stormwater measures.

WATER DEPENDENT STRUCTURE. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

WATERSHED. The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)

WATERSHED ADMINISTRATOR. An official or designated person of the city responsible for administration and enforcement of this chapter.

WET DETENTION PONDS. Most people are familiar with wet detention pond as a type of storm water management measure. Wet ponds are designed to maintain a permanent pool of water that is designed for a target Total Suspended Solids Removal according to the size and imperviousness of the drainage area. These ponds are also designed to hold and slowly release the runoff from a small storm event (one-inch). The use of wet ponds may be limited on very small sites and by other site constraints. In general, however, wet ponds are applicable to the majority of sites requiring stormwater management.

(B) *Word Interpretation.* For the purpose of this chapter, certain words shall be interpreted as follows:

(1) Words in the present tense include the future tense.

(2) Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

(3) The word "person" includes a firm, association, corporation, trust, and company as well as an individual.

(4) The word "structure" shall include the word "building."

(5) The word "lot" shall include the words "plot," "parcel," and "tract."

(6) The word "shall" is always mandatory and not merely directory.

(7) The word "will" is always mandatory and not merely directory.

(Ord. 93-09, passed 7-1-93; Am. Ord. 94-02, passed 4-11-94; Am. Ord. 99-09, passed 9-13-99)

SUBDIVISION REGULATIONS.

§ 153.10 GENERAL REGULATIONS.

(A) No subdivision plat of land within the Public Water Supply Watershed shall be filed or recorded by the Gaston County Register of Deeds until it has been approved in accordance with the provisions of this subchapter. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this subchapter.

(B) The approval of a plat does not constitute or effect the acceptance by the city or the public of the dedication of any street or other ground, easement, right-of-way, public utility line, or other public facility shown on the plat and shall not be construed to do so.

(C) All subdivisions shall conform with the mapping requirements contained in G.S. § 47-30.

(D) All subdivisions of land within the jurisdiction of city after the effective date of this chapter shall require a plat to be prepared, approved, and recorded pursuant to this chapter.
(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 183.11 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.

(A) *Certificate of Approval for Recording.* All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting the plat with vicinity map and certification to the Watershed Administrator to determine whether or not the property is located within the designated Public Water Supply Watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this chapter and may be recorded provided the Watershed Administrator signs the following certification:

"I certify that this plat is not within a designated Public Water Supply Watershed.

Date

Watershed Administrator
City of Belmont

(B) In addition, subdivisions are subject to the provisions of this chapter only when an erosion and sedimentation plan is required under the provisions of state law, or approved local program. Subdivisions within the designated watershed area shall comply with the provisions of this subchapter and all other state and local requirements that may apply.

(C) Subdivision applications shall be filed with the Watershed Administrator. The application shall include a completed application form, two copies of the plat and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board.

(D) The Watershed Administrator shall review the completed application and submit recommendations to the Watershed Review Board for further review and final action. The Watershed Review Board shall either approve, approve conditionally or disapprove each application by a majority vote of all members of the Board not excused from voting on the question in issue (including the chairman's vote in case of an equal division). First consideration of the application, submitted at least 14 days prior to a scheduled Board meeting, shall be at the next regularly scheduled meeting. The Board shall take final action within 45 days of its first consideration. The Watershed Administrator or the Board may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their comments and recommendations shall not delay the Board's action within the prescribed time limit. Said public agencies may include, but are not limited to, the following:

- (1) The district highway engineer with regard to proposed streets and highways.
- (2) The Director of the Health Department with regard to proposed private water system or sewer systems normally approved by the Health Department.
- (3) The state Division of Environmental Management with regard to proposed sewer systems normally approved by the Division, engineered storm water controls or storm water management in general.
- (4) Any other agency or official designated by the Watershed Administrator or Watershed Review Board.

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(E) *Certificate of Approval for Recording.* If the Watershed Review Board approves the application, such approval shall be indicated on both copies of the plat by the following certificate and signed by the chairman or other authorized member of the Board:

"I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Review Board for recording in the Register of Deeds office.

Date

Chairman
Watershed Review Board
City of Belmont

NOTICE: This property is located within a Public Water Supply Watershed - development restrictions may apply.

(F) If the Watershed Review Board disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant and entered in the minutes. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review and application fees.

(G) All subdivision plats shall comply with the requirements for recording of the Gaston County Register of Deeds.

(H) The subdivider shall provide the Watershed Administrator with evidence the plat has been recorded with the Registers of Deeds within five working days of its being recorded.
(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.12 SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS.

(A) *Adequate building space.* All lots shall provide adequate building space in accordance with the development standards contained in §§ 153.25 through 153.33. Lots which are smaller than the minimum required for residential lots shall be identified on the plat as, "NOT FOR RESIDENTIAL PURPOSES."

(B) *Built-upon area.* For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) *Storm water drainage facilities.* The application shall be accompanied by a description of the proposed method of providing storm water drainage. The subdivider shall provide a drainage system that diverts stormwater runoff away from surface waters and incorporates best management practices to minimize water quality impacts.

(D) *Erosion and sedimentation control.* The application shall, where required, be accompanied by a written statement that a sedimentation and erosion control plan has been submitted to and approved by the local agency administering a sedimentation and erosion control ordinance approved by the N.C. Division of Land Quality.

(E) *Roads.* Roads constructed in critical areas and watershed buffer areas. Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed so to minimize their impact on water quality.
(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.13 CONSTRUCTION PROCEDURES.

(A) No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved by the Watershed Review Board.

(B) No building or other permits shall be issued for erection of a structure on any lot not of record at the time of adoption of this chapter until all requirements of this chapter have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.
(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.14 TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS; PENALTY.

(A) Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the city, thereafter subdivides his land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this chapter and recorded in the office of the Register of Deeds, shall be guilty of a misdemeanor.

(B) The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty.

(C) The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this chapter.
(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

DEVELOPMENT REGULATIONS

§ 153.28 ESTABLISHMENT OF WATERSHED AREAS.

(A) The purpose of this subchapter is to list and describe the watershed areas herein adopted.

(B) For the purposes of this chapter, the city is hereby divided into the following areas:

(1) WS-IV-CA — (Critical Area).

(2) WS-IV-PA — (Protected Area).

(Ord. 93-09, passed 7-1-93)

§ 183.26 WATERSHED AREAS DESCRIBED.

(A) *WS-IV Watershed Areas - Critical Area (WS-IV-CA)*. Only new development activities that require a sedimentation and erosion control plan under state law or approved local program are required to meet the provisions of this chapter when located in the WS-IV watershed. In order to address a moderate to high land use intensity pattern, single family residential uses are allowed at a maximum of two dwelling units per acre provided that: a natural vegetative buffer of 100 feet shall be provided on all lands contiguous with the Catawba River, the South Fork branch of the Catawba River, and on each side of all streams in the WS-IV-CA (critical area) watershed, and one or more of the following options are selected to achieve an efficiency of 85% Total Suspended Solids (TSS) Removal.

| Practice | Assumed TSS Removal Efficiencies |
|----------------------------------|-------------------------------------|
| Wet detention ponds | 85% |
| Extended detention wetlands | 85% |
| Pocket wetlands | 35% |
| Bioretention/biofiltration areas | 85% |
| Sand filters | 85% |
| Grassed swales | 35% |
| Filter strips | 35% |
| Extended dry detention | 50% |
| Infiltration practices | 85% |

All other residential and non-residential development shall be allowed 24% built-upon area. New sludge application sites and landfills are specifically prohibited.

(1) Allowed uses:

(a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operations greater than 100 animal units shall employ 1st Management Practices by July 1, 1994 recommended by the Soil and Water Conservation Commission.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).

(c) Residential.

(d) Non-residential development, excluding:

1. The storage of toxic and hazardous materials unless a spill containment plan is implemented;
2. Landfills; and

3. Sites for land application of sludge/residuals or petroleum contaminated soils.

(2) Density and built-upon limits:

(a) Single-family residential development shall not exceed two dwelling units per acre on a project by project basis. No residential lot shall be less than 1/2 acre, except within an approved cluster development.

(b) All other residential and non-residential development shall not exceed 24% built-upon area on a project by project basis, provided that engineered stormwater control devices shall be used to control runoff from the first one inch of rainfall. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(c) High density options are not permitted.

(B) *WS-IV Watershed Areas - Protected Area (WS-IV-PA)*. Only new development activities that require a sedimentation and erosion control plan under state law or approved local government program are required to meet the provisions of this chapter when located in a WS-IV watershed. In order to address a moderate to high land use intensity pattern, single-family residential uses shall develop at a maximum of two dwelling units per acre, or alternatively at a maximum of 24% built upon area, provided that: a natural vegetative buffer of 50 feet shall be provided on each side of all streams in WS-IV-PA (protected area), and one or more of the following options are selected to achieve an efficiency of 85% Total Suspended Solids (TSS) Removal.

| Practice | Assumed TSS Removal Efficiencies |
|----------------------------------|---|
| Wet detention ponds | 85% |
| Extended detention wetlands | 85% |
| Pocket wetlands | 35% |
| Bioretention/biofiltration areas | 85% |
| Sand filters | 85% |
| Grassed swales | 35% |
| Filter strips | 35% |
| Extended dry detention | 50% |
| Infiltration practices | 85% |

All other residential and non-residential development shall be allowed 24% built-upon area. New sludge application sites and landfills are specifically prohibited.

(1) Allowed uses:

(a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).

(c) Residential development.

(d) Non-residential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.

(2) Density and built-upon limits:

(a) Single-family residential development shall not exceed two dwelling units per acre, or alternatively, 24% built-upon area, as defined on a project by project basis.

(b) All other residential and non-residential development shall not exceed 24% built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

(c) High density options using engineered stormwater control devices are permitted in this district in accordance with §§ 153.45 through 153.51.
(Ord. 93-09, passed 7-1-93; Am. Ord. 99-09, passed 9-13-99) Penalty, see § 153.99

§ 153.27 CLUSTER DEVELOPMENT.

Clustering of development, if allowed under current city zoning and subdivision ordinances, is allowed in all watershed areas under the following conditions;

(A) Minimum lot sizes are not applicable to single-family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments in § 153.26. Built-upon area of the project shall not exceed that allowed for the critical area or protected area, whichever applies.

(B) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.

(C) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management, to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(Ord. 93-09, passed 7-1-93; Am. Ord. 99-09, passed 9-13-99) Penalty, see § 153.99

§ 153.28 BUFFER AREAS REQUIRED.

(A) *WS-IV-CA-Critical Area*. A minimum 100 foot vegetative buffer is required along all streams or as determined by local government studies.

(B) *WS-IV-PA-Protected Area*. A minimum 50 foot vegetative buffer is required along all streams or as determined by local government studies.

(C) No new development is allowed in the buffer except for water dependent structures and road and utility crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, and maximize the utilization of stormwater best management practices. (Ord. 93-09, passed 7-1-93; Am. Ord. 99-09, passed 9-13-99) Penalty, see § 153.99

§ 153.29 RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the watershed map, the following rules shall apply:

(A) Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.

(B) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the city as evidence that one or more properties along these boundaries do not lie within the watershed area.

(C) Where the watershed area boundaries lie at a scaled distance more than 25 feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.

(D) Where the watershed area boundaries lie at a scaled distance of 25 feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

(E) Where other uncertainty exists, the Watershed Administrator shall interpret the watershed map as to location of such boundaries. This decision may be appealed to the Watershed Review Board. (Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.30 APPLICATION OF REGULATIONS.

(A) No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.

(B) No area required for the purpose of complying with the provisions of this chapter shall be included in the area required for another building.

(C) Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulations herein specified, except as permitted in § 153.31.

(D) If a use or class of use is not specifically indicated as being allowed in a watershed area, such use or class of use is prohibited.

(E) Public water supply treatment and wastewater treatment facilities and contiguous lands intended for the expansion of said facilities, shall be exempted from the application of this chapter. (Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.31 EXISTING DEVELOPMENT.

(A) *Generally.* Any existing development, as defined in this chapter, may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this chapter, however, the built-upon area of the existing development is not required to be included in the density calculations.

(B) *Vacant lots.* This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Gaston County, or vacant lots which are part of an existing development which by historical records or pattern of use would reasonably be deemed to be vacant lot whether recorded or not. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:

(1) Where the lot area is below the minimum specified in this chapter the Watershed Administrator is authorized to issue a watershed protection permit.

(2) Notwithstanding the foregoing, whenever two or more contiguous residential vacant lots of record are in single ownership at any time after the adoption of this chapter and such lots

individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots are located, such lots shall be combined to create one or more lots that meet the standards of this ordinance, or if this is impossible, reduce to the extent possible the nonconformity of the lots.

(C) *Occupied lots.* This category consists of lots, occupied for residential purposes at the time of the adoption of this chapter. These lots may continue to be used provided that whenever two or more adjoining lots of record, one of which is occupied, are in single ownership at any time after the adoption of this chapter, and such lots individually or together have less area than the minimum requirements for residential purposes for the watershed area in which they are located, such lots shall be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity.

(D) *Uses of Land.* This category consists of uses existing at the time of adoption of this chapter where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

(1) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.

(2) Such use of land shall be changed only to an allowed use.

(3) When such use ceases for a period of at least six months, it shall not be reestablished.

(E) *Reconstruction of buildings or built-upon areas.* Any existing building or built-upon area not in conformance with the restrictions of this chapter that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single-family residential development, provided:

(1) Repair or reconstruction is initiated within 12 months and completed within two years of such damage.

(2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.
(Ord. 93-09, passed 7-1-93; Am. Ord. 99-09, passed 9-13-99) Penalty, see § 153.99

§ 153.32 WATERSHED PROTECTION PERMIT.

(A) Except where a single-family residence is constructed on a lot deeded prior to the effective date of this chapter, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the Watershed Administrator. No watershed protection permit shall be issued except in conformity with the provisions of this chapter.

(B) Watershed protection permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form, supporting documentation deemed necessary by the Watershed Administrator, and application fees as determined by City Council.

(C) Prior to issuance of a watershed protection permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this chapter.

(D) A watershed protection permit shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within 12 months from the date of issuance.

(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.33 BUILDING PERMIT REQUIRED.

Except for a single-family residence constructed on a lot deeded prior to the effective date of this chapter, no building permit required under the state building code shall be issued for any activity for which a watershed protection permit is required until the watershed protection permit has been issued.

(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.34 WATERSHED PROTECTION OCCUPANCY PERMIT.

(A) The Watershed Administrator shall issue a watershed protection occupancy permit certifying that all requirements of this chapter have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land. The Watershed Administrator shall require documentation from the applicant certifying conformance with the requirements of the watershed protection permit as a part of the watershed protection occupancy permit.

(B) A watershed protection occupancy permit, either for the whole or part of a building, shall be applied for coincident with the application for a watershed protection permit and shall be issued or denied within ten days after the applicant has notified the Watershed Administrator in writing that the erection or structural alterations of the building are complete.

(C) When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a watershed protection occupancy permit certifying that all requirements of this chapter have been met coincident with the watershed protection permit.

(D) If the watershed protection occupancy permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.

(E) No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a watershed protection occupancy permit.

(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.35 FEES.

The City Council shall adopt from time to time, a schedule of fees for the permitting, enforcement and other requirements, as specified in this chapter.

(Ord. 93-09, passed 7-1-93)

HIGH DENSITY DEVELOPMENT.**§ 153.45 HIGH DENSITY DEVELOPMENT STANDARDS.**

(A) The Watershed Review Board may approve high density development proposals consistent with the following standards:

(1) *WS-IV Watershed Areas - Critical Area (WS-IV-CA)*. Where new development exceeds either two dwelling units per acre or 24% built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 50% built-upon area.

(2) *WS-IV Watershed Areas - Protected Area (WS-IV-PA)*. Where new development requires a Sedimentation/Erosion Control Plan and exceeds either two dwelling units per acre or 24% built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 70% built-upon area.

(B) High density development shall meet the requirements of this chapter.
(Ord. 93-09, passed 7-1-93; Am. Ord. 99-09, passed 9-13-99) Penalty, see § 153.99

§ 153.46 HIGH DENSITY DEVELOPMENT PERMIT APPLICATION.

(A) A high density development permit shall be required for new development exceeding the requirements of the low density option.

(B) Application for a high density development permit shall be addressed and submitted to the Watershed Review Board through the Watershed Administrator at least 30 days prior to a Watershed Review Board meeting. Application for a high density development permit shall be made on the proper form and shall include the following information:

(1) A completed high density development permit application signed by the owner of the property;

(2) Two copies of the development plan within the drainage basin including the applicable information listed in application forms, subdivision plat checklist and detailed information concerning built-upon area;

(3) Two copies of the plans and specifications of the stormwater control structure consistent with § 153.47;

(4) Written verification that a soil erosion and sedimentation control plan has been approved by the appropriate state or local agency; and

(5) Permit application fees consistent with § 153.50.

(C) Prior to taking final action on any application, the Board or the Watershed Administrator may provide an opportunity to public agencies affected by the development proposal to review and make

recommendations on the application. However, failure of the agencies to submit their comments and recommendations shall not delay the Board's action within the prescribed time limit.

(D) The Watershed Review Board shall either approve or disapprove each application for a high density development permit based on the applicable criteria contained in this chapter. First consideration of a completed application shall be at the next regularly scheduled meeting of the Board following its receipt. The Board shall take action on the application at its first consideration or within 65 days of its first consideration.

(1) If the Board approves the application based on its findings, such approval shall be indicated. A high density development permit shall be issued after the applicant posts a performance bond or other acceptable security as required in § 153.48(B)(1) and executes an operation and maintenance agreement as required in § 153.48(C). A copy of the permit and one copy of each set of plans shall be kept on file at the Watershed Administrator's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.

(2) If the Board disapproves the application based on its findings, the reasons for such action shall be stated in the minutes of the Board and presented to the applicant in writing either by personal service or registered mail, return receipt requested. The applicant may make changes and submit a revised plan. All revisions shall be submitted, reviewed and acted upon by the Board pursuant to the procedures of this section, and shall be considered a new submittal subject to the requirements and application fees as set forth in this chapter.

(E) The Watershed Review Board shall issue a high density development permit within 65 days of its first consideration upon finding that the proposal is consistent with the applicable standards set forth in this chapter.

(F) In addition to any other requirements provided by this chapter, the Board may designate additional permit conditions and requirements to assure that the use will be harmonious with the area in which it is proposed to be located and with the spirit of this chapter. All additional conditions shall be entered in the minutes of the meeting at which the permit is granted, on all plans and on the permit certificate. All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heirs, successors or assigns during the continuation of the permitted use.

(G) The Board shall issue a written ruling and make copies available at the office of the Watershed Administrator or the City Clerk.
(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.47 STORMWATER CONTROL STRUCTURES.

(A) All stormwater control structures shall be designed by a North Carolina registered professional engineer. Other stormwater systems shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required. These registered professionals are defined as professional engineers, landscape architects and land surveyors to the extent that the design represents incidental drainage within a subdivision as provided in G.S. § 89(C)-3(7).

(B) All stormwater controls shall use wet detention ponds as a primary treatment system. The Watershed Review Board may, upon review and approval, authorize the use of other NCDENR-approved Phase II stormwater best management practices (BMPs) as found in the most current version of the DWQ Stormwater Manual. If an alternative to a wet pond is used, the alternative shall be designed to remove a minimum of 85% TSS and meet one of the following criteria: (i) draw-down within two to five days after a one-inch storm event, or (ii) post-development peak discharge rate equal to pre-development rate for a one-year, 24-hour storm event. Two or more BMPs may be used in succession to achieve the required minimum criteria.

(C) In addition to the vegetative filters required in division (B)(6) above, all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within 30 days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in § 153.48(C).

(D) A description of the area containing the stormwater control structure shall be prepared and filed consistent with § 153.51(A) and (B), as a separate deed with the Gaston County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the detention pond, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.

(E) Qualifying areas of the stormwater control structure may be considered pervious when computing total built-upon area. However, if the structure is used to compute the percentage built-upon area for one site, it shall not be used to compute the built-upon area for any other site or area. (Ord. 93-09, passed 7-1-93; Am. Ord. 99-09, passed 9-13-99; Am. Ord. 08-26, passed 10-6-08) Penalty, see § 153.99

§ 153.48 POSTING OF FINANCIAL SECURITY REQUIRED.

(A) All new stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs or reconstruction necessary for adequate performance of the stormwater control structures.

(B) Financial assurance shall be in the form of the following:

(1) *Security performance bond or other security.* The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the city or placed in escrow with a financial institution designated as an official depository of the city. The bond or other instrument shall be in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated and certified by a North Carolina registered professional engineer and approved by the Watershed Review Board. The total cost of the stormwater control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and, grading, excavation, fill, etc. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.

(2) *Cash or equivalent security deposited after the release of the performance bond.* Consistent with § 153.51(C)(1), the permit applicant shall deposit with the city either cash or other instrument approved by the Watershed Review Board that is readily convertible into cash at face value. The cash or security shall be in an amount equal to 15% of the total cost of the stormwater control structure or the estimated cost of maintaining the stormwater control structure over a ten year period, whichever is greater. The estimated cost of maintaining the stormwater control structure shall be consistent with the approved operation and maintenance plan or manual provided by the developer under § 153.49(A). The amount shall be computed by estimating the maintenance cost for 25 years and multiplying this amount by two-fifths.

(C) Consistent with § 153.46, the permit applicant shall enter into a binding operation and maintenance agreement between the Watershed Review Board and all interests in the development. The agreement shall require the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operation and management plan or manual provided by the developer. The operation and maintenance agreement shall be filed with the Gaston County Register of Deeds by the Watershed Review Board.

(D) Upon default of the permit applicant to complete and/or maintain the stormwater control structure as spelled out in the performance bond or other security, the Board may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate.

(E) Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operation and maintenance agreement, the Board shall obtain and use all or any portion of the cash security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the operation and maintenance agreement. The Board shall not return any of the deposited cash funds.

(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.49 MAINTENANCE AND UPKEEP.

(A) An operation and maintenance plan or manual shall be provided by the developer for each stormwater control structure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and, consistent with the operation and maintenance agreement, who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a stormwater control structure to design specifications if a failure occurs.

(B) Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with any easement or access to the stormwater control structure.

(C) Except for general landscaping and grounds management, the owning entity shall notify the Watershed Administrator prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Watershed Administrator or designee shall inspect the completed improvements and shall inform the owning entity of any required additions, changes or modifications and of the time period to complete the improvements.

(D) Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the Watershed Review Board. Proposed changes shall be prepared by a North Carolina registered professional engineer and submitted to and reviewed by the Watershed Administrator prior to consideration by the Watershed Review Board.

(1) If the Watershed Review Board approves the proposed changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the office of the Watershed Administrator.

(2) If the Watershed Review Board disapproves the changes, the proposal may be revised and resubmitted to the Watershed Review Board as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.

(E) If the Watershed Review Board finds that the operation and maintenance plan or manual is inadequate for any reason, the Board shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the Gaston County Register of Deeds, the office of the Watershed Administrator and the owning entity.

(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 183.80 APPLICATION AND INSPECTION FEES.

(A) Processing and inspection fees shall be submitted to the city. Applications shall be returned if not accompanied by the required fee.

(B) A permit and inspection fee schedule, as approved by the City Council, shall be posted in the office of the Watershed Administrator.

(C) Inspection fees shall be valid for 60 days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with § 153.49(C).

(Ord. 93-09, passed 7-1-93)

§ 183.81 INSPECTIONS AND RELEASE OF THE PERFORMANCE BOND.

(A) The stormwater control structure shall be inspected by the Watershed Administrator or his designee, after the owning entity notifies the Watershed Administrator that all work has been completed. At this inspection, the owning entity shall provide:

(1) The signed deed, related easements and survey plat for the stormwater control structure ready for filing with the Gaston County Register of Deeds;

(2) A certification sealed by a North Carolina registered professional engineer stating that the stormwater control structure is complete and consistent with the approved plans and specifications.

(B) The Watershed Administrator shall present the materials submitted by the developer and the inspection report and recommendations to the Watershed Review Board at its next regularly scheduled meeting.

(1) If the Board approves the inspection report and accepts the certification, deed and easements, the Board shall file the deed and easements with the Gaston County Register of Deeds, release up to 75% of the value of the performance bond or other security and issue a watershed protection occupancy permit for the stormwater control structure, consistent with § 153.34.

(2) If deficiencies are found, the Board shall direct that improvements and inspections be made and/or documents corrected and resubmitted to the Board.

(C) No sooner than one year after the filing date of the deed, easements and maintenance agreement, the developer may petition the Watershed Review Board to release the remaining value of the performance bond or other security. Upon receipt of the petition, the Watershed Administrator or his designee shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The Watershed Administrator shall present the petition, inspection report and recommendations to the Watershed Review Board.

(1) If the Board approves the report and accepts the petition, the developer shall deposit with the Watershed Review Board a cash amount equal to that described in § 153.48(B)(2) after which, the Board shall release the performance bond or other security.

(2) If the Board does not accept the report and rejects the petition, the Board shall provide the developer with instructions to correct any deficiencies and all steps necessary for the release of the performance bond or other security.

(D) A watershed protection occupancy permit shall not be issued for any building within the permitted development until the Watershed Review Board has approved the stormwater control structure, as provided in division (B) above.

(E) All stormwater control structures shall be inspected at least on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the N.C. Division of Environmental Management. Annual inspections shall begin within one year of filing date of the deed for the stormwater control structure.

(F) In the event the Watershed Administrator discovers the need for corrective action or improvements, the Watershed Administrator shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All Improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Watershed Administrator shall inspect and approve the completed improvements.

(G) Appeals of any order, requirement, decision or determination made by the Watershed Administrator may be made to and decided by the Watershed Review Board consistent with § 153.71. (Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

PUBLIC HEALTH REGULATIONS

§ 153.60 PUBLIC HEALTH IN GENERAL.

No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.61 ABATEMENT.

(A) The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

(B) The Watershed Administrator shall report all findings to the Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendations.

(C) Where the Watershed Review Board finds a threat to water quality and the public health, safety and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

(Ord. 93-09, passed 7-1-93)

ADMINISTRATION AND ENFORCEMENT

§ 153.70 WATERSHED ADMINISTRATOR; DUTIES.

(A) The city shall appoint a Watershed Administrator, who shall be duly sworn in.

(B) It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this chapter as follows:

(1) The Watershed Administrator shall issue watershed protection permits and watershed protection occupancy permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

(2) The Watershed Administrator may serve as clerk to the Watershed Review Board.

(3) The Watershed Administrator shall keep records of all amendments to this chapter and shall provide copies of all amendments upon adoption to the Supervisor of the Classification and Standards Group, Water Quality Section, N.C. Division of Environmental Management.

(4) The Watershed Administrator is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his responsibility the full police power of the city. The Watershed Administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this chapter.

(5) The Watershed Administrator shall keep a record of variances to this chapter. This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, N.C. Division of Environmental Management and shall provide a description of each project receiving a variance and the reasons for granting the variance. A record of all variances granted by the city during the previous calendar year will be submitted to the Division of Environmental Management on or before January 1st of the following year.

(Ord. 93-09, passed 7-1-93; Am. Ord. 94-02, passed 4-11-94)

§ 183.71 APPEAL FROM THE WATERSHED ADMINISTRATOR.

(A) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board.

(B) An appeal from a decision of the Watershed Administrator must be submitted to the Watershed Review Board within 30 days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

(D) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

(Ord. 93-09, passed 7-1-93)

§ 183.72 CHANGES AND AMENDMENTS.

(A) The City Council may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.

(B) No action shall be taken until the proposal has been submitted to the Watershed Review Board for review and recommendations. If no recommendation has been received from the Watershed Review Board within 45 days after submission of the proposal to the chairman of the Watershed Review Board, the City Council may proceed as though a favorable report had been received.

(C) Under no circumstances shall the City Council adopt such amendments, supplements or changes that would cause this chapter to violate the watershed protection rules as adopted by the N.C.

Environmental Management Commission. All amendments must be filed with the N.C. Division of Environmental Management, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.73 PUBLIC NOTICE AND HEARING REQUIRED.

Before adopting or amending this chapter, the City Council shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten nor more than 25 days before the date fixed for the hearing.

(Ord. 93-09, passed 7-1-93)

§ 153.74 ESTABLISHMENT OF WATERSHED REVIEW BOARD.

There shall be and hereby is created the Watershed Review Board consisting of all members of the City Council.

(Ord. 93-09, passed 7-1-93)

§ 153.75 GENERAL PROCEEDINGS OF THE WATERSHED REVIEW BOARD.

The mayor shall be the chairman and the mayor pro tempore the vice-chairman of the Board. The chairman in turn shall appoint a secretary, who may be an employee of the city, a city officer, or a member of the Watershed Review Board. The chairman, or in his absence the vice-chairman, may administer oaths and request the attendance of witnesses. The Board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question, together with records of its examinations and other official actions.

(Ord. 93-09, passed 7-1-93)

§ 153.76 MEETINGS.

(A) *Board meetings.* The Board may hold regular monthly meetings at a specified time and place. Special meetings of the Board may be called at any time by the chairman or by request of three or more members of the Board. At least 48 hours written notice of the time and place of meetings shall be given, by the chairman to each member of the Board. All Board meetings are to be held in accordance with G.S. Chapter 143, Article 33B, commonly referred to as the Open Meetings Law.

(B) *Cancellation of meetings.* Whenever there are no appeals or other business for the Board, or whenever so many members so notify the secretary of inability to attend that a quorum will not be available, the chairman shall dispense with a meeting by giving written or oral notice to all members.

(C) *Quorum.* A majority of the actual membership of the Board plus the chairman, excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

(D) *Voting.* No member shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the meeting chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. An affirmative vote equal to a majority of all the members of the Board not excused from voting on the question in issue (including the chairman's vote in case of an equal division) shall be required to take any action.

(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.77 RULES OF CONDUCT FOR BOARD MEMBERS.

Members of the Board may be removed by the City Council for cause, including violation of the rules stated below:

(A) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.

(B) No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested.

(1) *Financial interest.* A Board member shall have a "financial interest" in a case when a decision in the case will:

(a) Cause him or his spouse to experience a direct financial benefit or loss; or

(b) Will cause a business in which he or his spouse owns a 10% or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss.

(2) *Personal interest.* A Board member shall have a "personal interest" in a case when it involves a member of his immediate family (i.e., parent, spouse, or child).

(C) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Watershed Administrator or any other member of the Board, its secretary or clerk prior to the hearing.

(D) Members of the Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(E) Members of the Board shall give notice to the chairman at least 48 hours prior to the hearing of any potential conflict of interest which he has in a particular case before the Board.

(F) No Board member shall vote on any matter that decides an application or appeal unless he has attended the public hearing on that application or appeal.

(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 183.78 POWERS AND DUTIES OF THE WATERSHED REVIEW BOARD.

(A) *Administrative review.* The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this chapter.

(B) *Variances.* The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this chapter as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this chapter will result in practical difficulties or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done. In addition, the city shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

(1) Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:

(a) A site plan, drawn to a scale of at least one inch to 50 feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(b) A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Watershed Review Board in considering the application.

(c) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and each entity using the watershed for water consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request will have 30 days to submit comments to the Watershed Administrator. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

(2) Before the Watershed Review Board may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

(a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

1. If he complies with the provisions of the chapter, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting an variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the chapter that will make possible the reasonable use of his property.

2. The hardship results from the application of the chapter to the property rather than from other factors such as deed restrictions or other hardship.

3. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

4. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the chapter, or who purchases the property after the effective date of the chapter, and then comes to the Board for relief.

5. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

(b) The variance is in harmony with the general purpose and intent of the chapter and preserves its spirit.

(c) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(3) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this chapter. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

(4) The Watershed Review Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(5) A variance issued in accordance with this section shall be considered a watershed protection permit and shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within six months from the date of the decision.

(6) If the application calls for the granting of a major variance, and if the Watershed Review Board decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

- (a) The variance application;
- (b) The hearing notices;
- (c) The evidence presented;
- (d) Motions, offers of proof, objections to evidence, and rulings on them;
- (e) Proposed findings and exceptions;
- (f) The proposed decision, including all conditions proposed to be added to the permit.

(7) The preliminary record shall be sent to the N.C. Environmental Management Commission for its review as follows:

(a) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

(b) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure a reasonable return from or make a practical use of the property without the variance or the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

(C) *Subdivision approval.* See §§ 153.10 through 153.14.

(D) *Public Health.* See §§ 153.60 and 153.61.

(E) *Approval of all development greater than the low density option.* See §§ 153.45 through 153.51. (Ord. 93-09, passed 7-1-93; Am. Ord. 94-02, passed 4-11-94)

§ 153.79 RULES OF PROCEDURE, APPEALS AND VARIANCES.

(A) *Types of appeals and variances.*

(1) *Appeals.* The Board shall hear and decide all appeals from any decision or determination made by the Watershed Administrator.

(2) *Variances.* All applications for variances shall first be presented to the Watershed Administrator, who in turn shall refer the applications to the Watershed Review Board for review and decision in accordance with the procedures outlined in § 153.78.

(B) *Procedure for filing applications for appeals and variances.* No hearing shall be held by the Board unless notice thereof is filed within 30 days after the interested party or parties receive the decision or determination by the Watershed Administrator or the aggrieved party or parties receive constructive notice of the decision. Application shall be filed with the Watershed Administrator, who shall act as clerk for the Board in receiving this notice. All applications shall be made upon the form specified for that purpose and all information required on the form shall be complete before an application shall be considered as having been filed. A filing fee shall accompany the application as set by the City Council. Once an application has been filed, the Watershed Administrator shall immediately notify the chairman of the Board that such application has been received.

(C) *Hearings.*

(1) *Time.* After receipt of an application for an appeal or variance, the Board chairman shall schedule a time for a hearing which shall be within 45 days from the filing of such notice of the application.

(2) *Notice of hearing.* For all applications, notice of the hearing shall be mailed to the adjoining property owners and to such other persons as the Watershed Administrator shall direct at least five days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved and the time and place of the hearing.

(3) *Conduct of hearing.*

(a) The hearing shall be a quasi-judicial proceeding. Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:

1. The chairman, or such person as he shall direct, shall give a preliminary statement of the case;
2. The applicant shall present the argument in support of the application;
3. Persons opposed to granting the application shall present their argument against the application;
4. Both sides will be permitted to present rebuttals to opposing testimony; and
5. The chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections.

(b) Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board may view the premises before arriving at a decision. All witnesses before the Board shall be placed under oath and the opposing party may cross-examine them.

(D) *Decisions.*

(1) *Time.* A decision by the Board shall be made within 35 days from the time of hearing.

(2) *Form.* Written notice by certified or registered mail of the decision in a case shall be given to the applicant or appellant by the secretary as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property and to persons who have made a written request for such notice. The final decision of the Board shall be shown in the record of the case as entered in the approved minutes. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made.

(3) The decision on an application for an appeal may reverse or affirm, wholly or partly, or modify the decision or determination of the Watershed Administrator.

(4) With an application for a major variance, the Watershed Review Board shall provide a recommendation to the N.C. Environmental Management Commission. The N.C. Environmental

Management Commission shall have the authority to approve or deny the issuance of a variance. If the N.C. Environmental Management Commission approves the variance, the Watershed Review Board may direct the Watershed Administrator to issue a watershed protection permit.

(5) *Voting.* The concurring vote of four of the members of the Board shall be necessary to reverse any decision or determination of the Watershed Administrator. A majority vote of the members present and voting is required to provide a recommendation to the N.C. Environmental Management Commission on an application for a major variance.

(6) *Public record of decisions.* The decisions of the Board, as filed in its minutes, shall be a public record and available for inspection at all reasonable times. Every decision of the Watershed Review Board shall be filed in the office of the Watershed Administrator and a written copy thereof shall be delivered to the applicant by personal service or registered mail.

(7) *Decisions and Appeals.* Every decision by the Board regarding appeals from decisions of the Watershed Administrator shall be subject to review by superior court. All appeals shall be taken to superior court within 30 days after the decision of the Board is filed in the office of the Watershed Administrator, or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.
(Ord. 93-09, passed 7-1-93) Penalty, see § 153.99

§ 153.80 OPERATION AND MAINTENANCE AGREEMENT.

The City Manager is hereby authorized to sign the operation and maintenance agreement described in § 153.48(C), on behalf of the city.
(Ord. 93-09, passed 7-1-93)

§ 153.98 CIVIL REMEDIES.

(A) If any subdivision, development and/or land use is found to be in violation of this chapter, the City Council may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$1,000, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. § 143-215.6A. Each day that the violation continues shall constitute a separate offense.

(B) If the Watershed Administrator finds that any of the provisions of this chapter are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this chapter to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.
(Ord. 93-09, passed 7-1-93)

§ 153.99 PENALTY.

(A) Any person violating any provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. § 14-4. The maximum fine for each offense shall not exceed \$500. Each day that the violation continues shall constitute a separate offense.

(B) In addition to the remedies described division (A) above and consistent with G.S. § 160A-175, the Watershed Review Board may seek enforcement of this chapter through the City Council by assessing a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty in a prescribed period of time after being cited for violation of the chapter. The violation may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. The court may issue an injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular. If the defendant falls or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt and the city may execute the order of abatement. 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. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings including but not limited to attorney's fees and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith. Enforcement of this chapter may be by any one, all or a combination of the remedies authorized in this chapter. Each day's continuing violation shall be a separate and distinct offense.
(Ord. 93-09, passed 7-1-93)