



AGENDA
CITY OF LENOIR
CITY COUNCIL MEETING
905 WEST AVENUE
TUESDAY, JANUARY 19, 2021
6:00 P.M.



I. CALL TO ORDER

- A. Moment of Silence & Pledge of Allegiance

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council meeting of Tuesday, January 5, 2021 as submitted.
- B. FY2021 Annual Audit Contract; City of Lenoir: Approval of the FY2021 Annual Audit Contract as submitted by S. Eric Bowman, PA, for the City of Lenoir. The agreed upon cost for the audit is \$98.00 per hour per person with a 75% cap for interim invoice approval of \$36,382.00, which is 75% of the prior year's audit fee.
- C. Budget Amendment: Approval of Budget Amendments to be made to the annual budget ordinance for the fiscal year ending June 30, 2021 as follows:
- | | |
|--|--------------|
| 1) General Fund to allocate COVID reimbursement | \$314,054.98 |
| 2) Water Fund to allocate COVID reimbursement | \$ 25,400.00 |
| 3) Main Street to allocate COVID reimbursement | \$ 8,200.00 |
| 4) LTDA to allocate COVID reimbursement | \$ 18,000.00 |
| 5) General Fund to allocate funding for NC Rural Center Grant Reimbursement for Woodgrain Millwork | \$ 55,000.00 |
| 6) General Fund to allocate funding for donation to improve bathrooms and deck at T.H. Broyhill Walking Park | \$100,000.00 |

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

1. The Planning Board will conduct a virtual meeting on Monday, January 25 at 5:30 p.m.
2. The Committee of the Whole will meet on Tuesday, January 26 at 8:30 a.m.
3. The Foothills Regional Airport will conduct a virtual meeting on Wednesday, January 27 at noon.

B. Items for Council Action

1. Chapter 160D Legislation: A public hearing was held on Tuesday, January 5, 2021 in order for City Council to consider the N.C.G.S. 160D Ordinance updates as presented by Planning Director Jenny Wheelock regarding legislation adopted by the General Assembly pertaining to Chapter 160D. This law also makes technical and clarifying amendments to Chapter 160D.

Note: City Council deferred action on adoption of the submitted Ordinance until the January 19, 2021 City Council meeting due to current legislation guidelines pertaining to public hearings. The legal ad for the public hearing was published in the News-Topic on Friday, December 25, 2020 and again on Friday, January 1, 2021. Staff recommends approval of the proposed Ordinance as submitted.

2. Bid Award; T.H. Broyhill Walking Park: City Staff recommends Council award the low bid of \$70,892.00 to Precision Contracting Company for renovations/upgrades to the restroom facility and the large deck that overlooks the pond at T.H. Broyhill Walking Park as submitted.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

- A. Board Re-Appointments: Mayor Gibbons will recommend the following individuals for Council's consideration of approval for re-appointment to the City's Authorities/Boards/Commissions. **Note:** These re-appointments were announced at the January 5 City Council meeting.

Lenoir Business Advisory Board

Tim Biddix

3-year term

Matt Underwood

3-year term

Planning Board

James Bradshaw

4-year term

- B. Board Announcement; Parks & Recreation Advisory Board: Mayor Gibbons will announce that Tim Poarch will be appointed to serve a two-year term on the Parks & Recreation Advisory Board. **Note:** This new appointment will be voted on by City Council at the February 2 meeting.

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

X. ADJOURNMENT

**LENOIR CITY COUNCIL
TUESDAY, JANUARY 5, 2021
6:00 P.M.**

PRESENT: Mayor Joe Gibbons presiding. Councilmembers present were Jonathan Beal, Ike Perkins, David Stevens, and Ben Willis. Police Chief Brent Phelps and Communications Director Joshua Harris were also in attendance at the meeting.

VIA TELECONFERENCE:

Participating via teleconference were Mayor Pro-Tem Crissy Thomas, Councilmembers Todd Perdue, Ralph Prestwood, City Attorney T.J. Rohr, City Manager Scott Hildebran and City Clerk Shirley Cannon.

Department Directors participating via teleconference were Finance Director Donna Bean, Fire Chief Hair, Recreation Director Kenny Story, Planning Director Jenny Wheelock, Economic Development Director Kaylynn Horn, Public Utilities Director Radford Thomas, Public Works Director Jared Wright and Communications Director Joshua Harris.

Also participating via teleconference was Garrett Stell, *News Topic*.

I. CALL TO ORDER

- A. The meeting was opened by a moment of silence followed by the Pledge of Allegiance as led by Mayor Gibbons.

GENERAL COMMENTS:

- B. Mayor Gibbons reported that, Firefighter Richard Dorenbusch who recently lost his home to a house fire, appreciated everyone's support and pointed out the Fire Department was assisting the family. A Go Fund Me page was also established for donations.

Mayor Gibbons extended sympathy to the Lenoir Police Department and Sergeant Poythress in the recent loss of K-9 Axel. Axel served the Department and the community well during his six years of service.

Mayor Gibbons thanked all City and County Staff along with Caldwell UNC Healthcare and numerous others who worked hard to set up the field hospital located beside of Caldwell UNC Healthcare and sponsored by Samaritan's Purse in Boone, North Carolina. The hospital is fully operational and Mayor Gibbons asked everyone to keep the individuals in their thoughts and prayers who currently have COVID-19 along with the families who have lost loved ones due to the coronavirus.

In addition, Mayor Gibbons encouraged everyone to continue to follow the protocols that may help prevent the spread of the virus such as wearing a mask, handwashing frequently and social distancing.

**EXPRESSION OF SYMPATHY;
WHISNANT FAMILY; CCC&TI:**

- C. Councilmember Ben Willis asked everyone to keep the family of Ms. Penny Whisnant in their thoughts and prayers as she recently lost her battle with cancer. Ms. Whisnant was an employee of Caldwell Community College and Technical Institute College (CCC&TI) for twenty-six years and was well respected by her peers, the students and the community. Ms. Whisnant served as the Office Manager in the Continuing Education department.

**ANNUAL AUDIT
REPORT; ABC BOARD:**

- D. Mayor Gibbons welcomed the members of the ABC Board who were participating in the meeting via Zoom and stated City Council appreciated all their hard work. The Board members are Jerry Brooks, Chairman, Dr. John Tye and Elizabeth Wilson.

Mr. Jerry Brooks, Chairman, ABC Board, reported that sales totaling \$530,000.00 reached an all-time high during the month of December. He shared the profit distribution also increased by \$74,000.00.

Mr. Steve Huntley, CPA, presented the FY2020 Annual Audit Report to City Council. He reported the City of Lenoir received a distribution amount of \$400,000.00 and the Caldwell County School System received a distribution amount of \$45,041.00. Also, Law Enforcement received \$18,646.00 and \$26,105.00 was allocated for Alcohol Education.

The total gross sales for 2020 were \$4,240,709.00 which was an increase of \$149,220.00. In addition, the total operating expenses were \$569,063.00 for an increase of \$31,108.00. Also, the change in net position was \$4,644.00.

Mr. Huntley further reported that cash increased by \$50,000.00 and the unrestricted working capital amount is \$406,156.00.

Mr. Mike Suddreth, Manager, commented that everything was going well and pointed out that masks were required at all of their locations. He remarked their first product tasting in December was also well received.

Ms. Elizabeth Wilson, Board Member, also reiterated that sales were up all over the state.

On behalf of City Council, Mayor Gibbons thanked the ABC Board for the great report especially during these past months of the pandemic. Mayor Gibbons also shared he was pleased with the operations of all of the stores and their services were well appreciated.

**SPECIAL RECOGNITION;
K-9 AXEL:**

- E. On behalf of City Council, Mayor Gibbons presented a resolution and extended sympathy to Police Sergeant Zachery Poythress in honor and memory of K-9 Axel who passed away on December 29, 2020 from a recent illness. Axel was a committed and dedicated K-9 who served the Police Department well for six (6) years. Sergeant Poythress' family was also in attendance at the meeting.

A copy of the resolution is hereby incorporated into these minutes by reference. (Refer to page 8).

Police Chief Brent Phelps read a statement from Sergeant Poythress which said that, "Some people will say that it is just a dog, but they overlook the impact these dogs have on people's lives. Axel has proven his dedication and love for the people of the Police Department and the City. I would like to express my deepest gratitude for the support of the Lenoir Police Department Command Staff, everyone at the Police Department, and for all the messages and support we have received during this time."

Sergeant Poythress further shared in his statement that "we could fill up pages with his stats, but what the stats will never know are the countless times he saved my life, another officer's life, or a citizen's life by doing his job or by nothing more than his presence. It will never be known the amount of times someone's mind was changed or a situation was deescalated just by Axel being there."

Axel also assisted other agencies 127 times including the Caldwell County Sheriff's Office, Hudson Police Department, Granite Falls Police Department, Hickory Police Department, Valdese Police Department, Burke County Sheriff's Office, North Carolina Highway Patrol, North Carolina State Bureau of Investigation, US Marshalls, and the US Department of Homeland Security.

Chief Phelps further commented that when individuals have interaction with a well-trained Police Officer and K-9, they know it. Chief Phelps thanked City Council for all of their support and also thanked Sergeant Poythress for his dedication, training, care and love for Axel.

On behalf of City Council, Mayor Gibbons commended K-9 Axel and Sergeant Poythress for their commitment and dedication to the Department, citizens and the community and thanked them for their service.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

CHAPTER 160D LEGISLATION:

- A. A public hearing was held in order for City Council to consider an ordinance updating the City's Code of Ordinances in accordance with N.C.G.S. Chapter 160D, as presented by Planning Director Jenny Wheelock.

A copy of the power point presentation is hereby incorporated into these minutes by reference. (Refer to pages 9-26). Also, a copy of the proposed ordinance is on file in the Planning Department.

Mayor Gibbons opened the public hearing to receive public comments for the amendments to Chapter 160D.

Director Wheelock presented an overview of the proposed ordinance, which addresses changes to the land development ordinances required by N.C.G.S. Chapter 160D.

The ordinance addressed all changes required under N.C.G.S. Chapter 160D except for changes to the streets and the subdivision chapters, which will be addressed in a separate ordinance this spring. Planning Staff is working hard with Public Works to coordinate the proposed changes, which must be adopted by July 2021 for the City to remain in compliance with the state law.

Director Wheelock shared that Planning Staff relied heavily on materials developed by the UNC School of Government in preparing the ordinance and followed the UNC School of Government's checklist to ensure they had addressed all of the new legislation within the ordinance. The submitted checklist also includes all of the notes made by the Planning Staff upon their review of the proposed ordinance.

Director Wheelock stated it is important to note that terminology pertaining to Conditional Use Permits has been replaced throughout the Ordinance by Special Use Permits. Director Wheelock reviewed conflict of interest standards for boards, modernization updates to the minimum housing enforcement chapter, the standards for administrative modifications for Special Use Permits and Conditional Zoning districts, and the role of the Planning Board in serving as a preliminary forum for special use permits. Director Wheelock clarified the Board of Adjustment is designated as the appeals board for all administrative decisions on development ordinances.

Responding to questions from the Council about the changes in the Planning Board's role in the review of Special Use Permits, Director Wheelock clarified that statutes allow for Special Use Permits to go before an advisory board before going before the Council for a quasi-judicial hearing and decision. However, the new law clarifies that the Planning Board can only serve as a "preliminary forum" and Council cannot base their decision on the recommendation of the Planning Board. City Attorney Rohr state there was no change regarding the legality of this process. Director Wheelock further pointed out the Planning Board will continue to make recommendations for site plan modifications, conditions, and additional information for consideration to both applicants and the Council, and hear citizen comments. The Board also aims to use the forum to better inform the citizens about the process and what a quasi-judicial hearing at Council will entail. Council will continue to receive staff analysis and recommendations, including draft findings of fact and conditions, and will

receive all of the comments from the Planning Board as well – just not as a formalized recommendation for approval or denial.

Director Wheelock commended everyone for all of their hard work and assistance in the preparation of this ordinance. She also extended a special thank you to Lucy McCarl and Sharon Bryant for their time and effort in consolidating the three sets of the rules and procedures into one set of New Rules of Procedures for the Land Use Boards thereby making them all consistent, as a related follow-up to the ordinance overhaul.

There being no further public participation, Mayor Gibbons closed the public hearing and reminded Council that, due to current legislation guidelines pertaining to public hearings, action would need to be deferred on the proposed Ordinance until the January 19 City Council meeting. The legal ad for the public hearing was published in the News-Topic on Friday, December 25, 2020 and again on Friday, January 1, 2021.

Upon a motion by Councilmember Willis, which carried unanimously, City Council deferred action on the submitted Ordinance until the January 19, 2021 City Council meeting as per current legislation guidelines pertaining to public hearings.

III. CONSENT AGENDA ITEMS

A. Upon a recommendation by City Manager Hildebran, the following Consent Agenda items were submitted for approval:

1. Minutes: Approval of the minutes of the City Council meeting of Tuesday, December 1, 2020 as submitted.
2. Proclamation; K-9 Axel: Approval of a proclamation in honor and memory of K-9 Axel who passed away on December 29, 2020. His service and dedication will be well remembered.

Upon a motion by Councilmember Willis, Council voted 7 to 0 to approve the above listed items on the Consent Agenda as presented and as recommended by City Manager Hildebran.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

JANUARY CALENDAR:

1. By consensus of the Council, the calendar for the month of January was approved.

CITY/COUNTY

SERVICES COMMITTEE:

2. The City/County Services Committee will conduct a virtual meeting on Monday, January 11 at noon.

EDC:

3. The Caldwell County Economic Development Commission will conduct a virtual meeting on Tuesday, January 12 at 8:00 a.m.

ABC BOARD:

4. The ABC Board will conduct a virtual meeting on Thursday, January 14 at 2:00 p.m.

LENOIR TOURISM DEVELOPMENT

AUTHORITY:

5. The Lenoir Tourism Development Authority will conduct a virtual meeting on Thursday, January 14 at 4:00 p.m.

LENOIR BUSINESS ADVISORY

BOARD:

6. The Lenoir Business Advisory Board will conduct a virtual meeting on Thursday, January 14 at 6:00 p.m.

HOLIDAY

CLOSING:

7. City offices will be closed on Monday, January 18 in observance of the Martin Luther King, Jr. Holiday.

B. ITEMS FOR COUNCIL ACTION

BID AWARD; LHS RENOVATION

PROJECT; FORMER LHS FACILITY:

1. City Staff recommends Council award the low bid of \$86,384.00 to Precision Construction Company, Granite Falls, NC, for the former LHS High School Auditorium (LHS) Construction Renovation Project as submitted.

A copy of the bid tab is hereby incorporated into these minutes by reference. (Refer to pages 27).

City Manager Hildebran reviewed the list of improvements that included sanding, painting, gutters, and new restrooms to be located on the main floor. Mr. Hildebran also reminded Council that Community Development Block Grant (CDBG) funds would be used for this renovation project.

Recreation Director Story also reported plans were in place for additional improvements at other facilities and clarified for Council an ADA ramp would be installed at the LHS Auditorium in order for individuals to access the stage area. These improvements will be included in the next phase of the project. Director Story thanked all City Staff and Departments for all their hard work and assistance regarding this project.

Upon a motion by Councilmember Beal, Council voted 7 to 0 to award the low bid of \$86,384.00 to Precision Construction Company for the LHS Renovation Project as submitted and as recommended by City Staff.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

BOARD ANNOUNCEMENTS:

A. Mayor Gibbons announced the following individuals for re-appointment to the City's Authorities/Boards/Commissions. These re-appointments will be presented to Council for their consideration of approval at the January 19 City Council meeting.

Lenoir Business Advisory Board

Tim Biddix

Matt Underwood

Planning Board

James Bradshaw

4-year term

Parks and Recreation Advisory Board

Vacancy due to the resignation of Board member Erik Rabinowitz who moved out of the City limits. Mr. Rabinowitz's term expires February 2022.

DELEGATE; NCLM ADVOCACY

GOALS:

B. Mayor Gibbons suggested that City Council select a voting Delegate for the purpose of submitting the City of Lenoir's recommendation to the North Carolina League of Municipalities (NCLM) for the City of Lenoir's 2021-2022 list of Advocacy Goals by Thursday, January 14, 2021.

Councilmember Perkins nominated Mayor Pro-Tem Crissy Thomas to serve as the City's Delegate to submit this information to the NCLM. This motion carried with a 6 to 0 vote.

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

X. ADJOURNMENT

A. There being no further business, the meeting was adjourned at 7:42 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

PROCLAMATION



In Recognition of

K-9 Axel

6/30/2013 – 12/29/2020



WHEREAS, canine Axel was born on June 30, 2013 in the Czech Republic and imported to the United States where he was purchased by the Lenoir Police Department in August of 2014; and

WHEREAS, canine Axel began his training in September of 2014 by Patrol Sergeant Zachery Poythress while he obtained his Comprehensive Police Service Dog Trainer and Police Service Dog Team Instructor Certifications; and

WHEREAS, canine Axel was officially certified to work in October of 2014 and was the first Lenoir Police Department K-9 to be dual certified by two certifying associations; and

WHEREAS, canine Axel in his 6 years of service, has been instrumental in the seizure of illegal drugs in the community, an asset in tracking suspects, missing persons, and lost children, as well as been a delight to various audiences with his demonstrations and training.

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of Lenoir acknowledge Police K-9 Axel's loyal and dedicated service to the citizens of Lenoir and to his handler Patrol Sergeant Zachery Poythress;

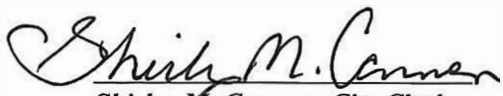
NOW THEREFORE BE IT FURTHER RESOLVED, that I, Joseph L. Gibbons, Mayor of the City of Lenoir, and on behalf of the Lenoir City Council, the citizens of Lenoir, and the department members of the Lenoir Police Department do hereby offer our most sincere condolences, thoughts and prayers to Sergeant Poythress and his family on the loss of Police K-9 Axel who passed away on December 29, 2020 due to a sudden illness. His service and dedication will long be remembered.

WITNESS, my hand and seal this the 5th *day of* January *, 2021.*

SEAL


Joseph L. Gibbons, Mayor

ATTEST:


Shirley M. Cannon, City Clerk



NCGS 160D Updates

{ Technical Changes to NC Land Use Law
(previously found in 160A and 153A)

Lenoir City Council

January 5, 2021

Presented by: Jenny Wheelock, AICP, CZO

- ⌘ SOG checklist – included in packets, summarizes how staff addressed each item in the new law
- ⌘ New terminology – Special Use Permits
- ⌘ General philosophy – streamline, consistency, clear expectations
- ⌘ Small fixes – a few things that we didn't catch when we did the zoning overhaul last year

Overview

- ⌘ Any case (QJ or Legislative), can't participate if:
 - ⌘ You have a close familial, business, or other associational relationship with the landowner or applicant
 - ⌘ The outcome of the matter is likely to have a direct, substantial, and readily identifiable financial impact on you

(pages 4-6 of ordinance)

Conflict of Interest: Review

- ⌘ Quasi-judicial cases, you ALSO can't participate if:
 - ⌘ You have a fixed opinion prior to the hearing that isn't susceptible to change
 - ⌘ You have talked about the case prior to the hearing, and haven't disclosed that communication ("ex parte communication")
 - ⌘ You have ANY financial interest in the outcome of the matter
 - ⌘ You have a close familial, business, or other associational relationship with an "affected party"

(Remember – all of the conflicts on the previous slide also apply!)

Conflict of Interest: Review

Appeals from all administrative decisions under 160D powers would go to the Board of Adjustment:

- ⌘ Building (current: City Council)
- ⌘ Housing (current: Board of Adjustment)
- ⌘ Floodplain Development (current: City Council)
- ⌘ Subdivisions (current: City Council)
- ⌘ Zoning (current: BOA)
- ⌘ Stormwater (current: BOA)

Appeals Board: Board of Adjustment

Declares certain occupied buildings and unoccupied structures to be detrimental to public health and safety:

- Occupied structures that are “unfit for human habitation” and
- Abandoned structures

Minimum Housing Ordinance

Process:

1. HI gets complaint, or observes a violation, conducts initial investigation
2. HI serves notice of complaints and notice of an administrative hearing to be held at the property
3. HI conducts an administrative hearing, makes findings.
4. Final order of the HI – 30 to 90 days to make repairs or demolish
5. Failure to abate – process for the City Council to adopt an ordinance and abate the violations

Minimum Housing Ordinance

Findings:

1. Deteriorated (can reasonably be repaired)
2. Dilapidated (cannot reasonably be repaired)

Orders:

1. Deteriorated – ordered to make repairs
2. Dilapidated – ordered to demolish/remove
3. Vacate and Close – when a structure is occupied, the Housing Inspector may also include an order to vacate and close, if continued occupancy while repairs are being made would “present significant threat of bodily harm”

Minimum Housing Ordinance

Council Actions:

1. Ordinance authorizing HI to cause the structures to be repaired and/or demolished
2. Recorded with the ROD
3. Ordinance can contain language to “vacate and close”
4. Costs added a lien on the subject property, same to a special tax assessment

Once an ordinance is adopted, the City can post the property as “unfit for human habitation” and it becomes a Class 1 misdemeanor to occupy the property.

NOTE: there is no authority in the statutes for this posting until an owner fails to comply with an order.

Minimum Housing Ordinance

- ⌘ Codifies our general practice, with specific guidelines to take most of the discretion out of the administrative process
- ⌘ ONLY available for two types of approvals: Conditional Zoning and Special Use Permits

Zoning Ordinance: Minor Modifications

Minor modifications can be approved by the Planning Director* when:

- ⌘ The modified plan continues to comply with all written conditions and standards of the CZ ordinance or the SUP permit; AND
- ⌘ The changes are necessary to comply with a development regulation or to accommodate a physical site constraint that was not known at the time of adoption; AND
- ⌘ The changes would not significantly alter the development's general function, form, intensity, character, demand on public facilities, impact on adjacent properties, or other character from that indicated by the original plans.

*Note that approval or denial of a requested modification could be appealed by anyone with standing to the BOA

Minor Modifications (administrative)

Proposed changes also specifically define what can't be a “minor” modification:

- ⌘ A change in a condition of approval/text of a CZ ordinance
- ⌘ A change in what uses are permitted
- ⌘ A change in the density of the overall development
- ⌘ For mixed-use projects, a change greater than 20 percent in the ratio of GFA of residential vs. non-residential uses*
- ⌘ For mixed-use projects, an increase greater than 10 percent in land devoted for non-residential uses*

*Only relevant to Conditional Zoning districts, as SUPs are for a single use. We've never had a project where this would apply, but land use ratios often shift based on market conditions and tenants, but also have disparate impacts (residential uses vs commercial uses).

Major Modifications

Original Project:

- ⌘ 68 units in 5 buildings, plus a community building
- ⌘ Two driveways
- ⌘ 136 parking spaces (2/unit)

What changed?

- ⌘ Parking code amended to reduce parking requirements
- ⌘ Site was re-surveyed, and original survey was found to be off by ~8 ft. on the existing grade of the property

Example Case: Katz Corner Apartments

KATTS CORNER

LENOIR, NC

2-15-2019



Minor Modification?

- ⌘ Couldn't get slope to work for Driveway on Lower Creek Drive; it was eliminated
- ⌘ Clubhouse relocated to central location on the site, because of requirements of the NC Housing Finance Agency
- ⌘ The additional 8' of drop in grade made the proposed 1story/2story split buildings impossible – 1story/3story buildings were proposed instead
- ⌘ The 2-story/3-story split building was reduced to 2 stories on both sides.
- ⌘ Parking reduced to 119 spaces (now back to 120)

Example Case: Katz Corner Apartments

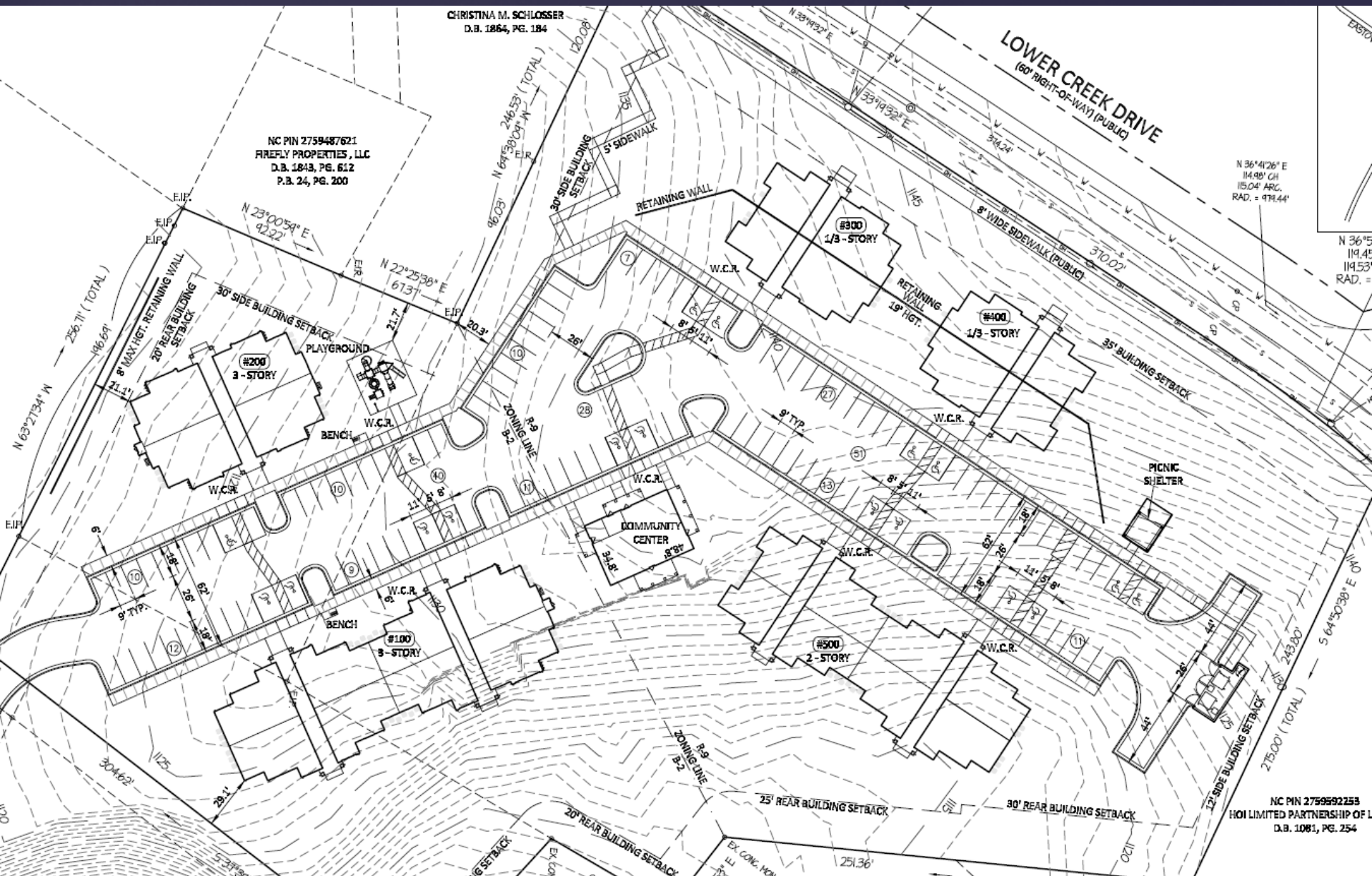
CHRISTINA M. SCHLOSSER
D.B. 1864, PG. 184

NC PIN 2759487621
FIREFLY PROPERTIES, LLC
D.B. 1843, PG. 612
P.B. 24, PG. 200

LOWER CREEK DRIVE
(60' RIGHT-OF-WAY) (PUBLIC)

N 36°41'26" E
114.48' CH
115.04' ARC,
RAD. = 979.44'

N 36°5'
119.45'
119.53'
RAD. =



NC PIN 2759592253
HOI LIMITED PARTNERSHIP OF L
D.B. 1081, PG. 254

28 The Planning Board provides a preliminary forum for review of special use permits. The Planning Board may hear citizen comments related to the permits, request that the applicant provide additional information to the City Council (such a request shall not be binding on the applicant), conduct informal preliminary discussion of the application, and make recommendations for revisions or conditions. Such recommendations should be based on goals and policies outlined in the Comprehensive Plan and other planning documents. No part of the forum or recommendation may be used as a basis for a decision by the City Council; however, the Planning Board's recommendations will be forwarded to the City Council along with other administrative materials pursuant to standard quasi-judicial procedures.

The Planning Board shall forward its recommendation on the application to the City Council within 45 days of the Board's first review of application. Upon an affirmative vote of the majority of the Planning Board to forward the recommendations to Council, or after 45 days have passed without a recommendation from the Planning Board, the planning department will set a date for an evidentiary hearing before the City Council and cause notice to be served and posted as provided under Article XIII, Division 3 of zoning ordinance. The Planning Board shall also call for and set the date of a public hearing during which the City Council shall receive public comments on the application.

PB review of Special Use Permits – p. 58

- ⌘ New Rules of Procedure for the Land Use Boards – chose to adopt “joint” rules for all three land use boards (Big thanks to Lucy McCarl and Sharon Bryant on that project!)
- ⌘ New housing and zoning enforcement letters; Iworq new code enforcement tracking program (we are already using it for permitting)
- ⌘ Streets and Subdivision chapters – streamlined review, cost sharing/developer agreements, dedication of ROW, Technical Review Committee, consistent standards for improvements between SW, zoning, streets, and subdivision.

Next steps; related projects

Questions? Discussion?

CITY OF LENOIR
COUNCIL ACTION FORM

I. Agenda Item:

Approve the Contract To Audit Accounts as submitted by S. Eric Bowman, PA

II. Background Information:

S. Eric Bowman, PA has submitted the Contract To Audit Accounts agreement to the City of Lenoir. The agreed upon cost for the audit is \$98.00 per hour per person with a 75% cap for interim invoice approval of \$36,382.00, which is 75% of the prior year's audit fee.

Staff Recommendation:

Approve as requested

III. Reviewed by:

City Attorney:

Finance Director: *Donna Bean*

Public Works/Public Utilities Director:

Planning Director:

Recreation Director:

The	Governing Board City Council
of	Primary Government Unit (or charter holder) City of Lenoir
and	Discretely Presented Component Unit (DPCU) (if applicable) NA

Primary Government Unit, together with DPCU (if applicable), hereinafter referred to as Governmental Unit(s)

and	Auditor Name S. Eric Bowman, PA
	Auditor Address PO Box 1476 Morganton, NC 28680

Hereinafter referred to as Auditor

for	Fiscal Year Ending 06/30/21	Audit Report Due Date 10/31/21
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Must be within four months of FYE

hereby agree as follows:

1. The Auditor shall audit all statements and disclosures required by U.S. generally accepted auditing standards (GAAS) and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit(s). The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion shall be rendered in relation to (as applicable) the governmental activities, the business- type activities, the aggregate DPCUs, each major governmental and enterprise fund, and the aggregate remaining fund information (non-major government and enterprise funds, the internal service fund type, and the fiduciary fund types).
2. At a minimum, the Auditor shall conduct his/her audit and render his/her report in accordance with GAAS. The Auditor shall perform the audit in accordance with *Government Auditing Standards* if required by the State Single Audit Implementation Act, as codified in G.S. 159-34. If required by OMB *Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and the State Single Audit Implementation Act, the Auditor shall perform a Single Audit. This audit and all associated audit documentation may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the Local Government Commission (LGC). If the audit requires a federal single audit performed under the requirements found in Subpart F of the Uniform Guidance (§200.501), it is recommended that the Auditor and Governmental Unit(s) jointly agree, in advance of the execution of this contract, which party is responsible for submission of the audit and the accompanying data collection form to the Federal Audit Clearinghouse as required under the Uniform Guidance (§200.512).

If the audit and Auditor communication are found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners (NC State Board).

3. If an entity is determined to be a component of another government as defined by the group audit standards, the entity's auditor shall make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.

4. This contract contemplates an unmodified opinion being rendered. If during the process of conducting the audit, the Auditor determines that it will not be possible to render an unmodified opinion on the financial statements of the unit, the Auditor shall contact the LGC Staff to discuss the circumstances leading to that conclusion as soon as is practical and before the final report is issued. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.

5. If this audit engagement is subject to the standards for audit as defined in *Government Auditing Standards*, 2018 revision, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he/she has met the requirements for a peer review and continuing education as specified in *Government Auditing Standards*. The Auditor agrees to provide a copy of the most recent peer review report to the Governmental Unit(s) and the Secretary of the LGC prior to the execution of an audit contract. Subsequent submissions of the report are required only upon report expiration or upon auditor's receipt of an updated peer review report. If the audit firm received a peer review rating other than pass, the Auditor shall not contract with the Governmental Unit(s) without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.

If the audit engagement is not subject to *Government Accounting Standards* or if financial statements are not prepared in accordance with U.S. generally accepted accounting principles (GAAP) and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment to this contract or in an amendment.

6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to LGC Staff within four months of fiscal year end. If it becomes necessary to amend this due date or the audit fee, an amended contract along with a written explanation of the delay shall be submitted to the Secretary of the LGC for approval.

7. It is agreed that GAAS include a review of the Governmental Unit's (Units') systems of internal control and accounting as same relate to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor shall make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his/her findings, together with his recommendations for improvement. That written report shall include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified)*. The Auditor shall file a copy of that report with the Secretary of the LGC.

8. All local government and public authority contracts for audit or audit-related work require the approval of the Secretary of the LGC. This includes annual or special audits, agreed upon procedures related to internal controls, bookkeeping or other assistance necessary to prepare the Governmental Unit's (Units') records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.

9. Invoices for services rendered under these contracts shall not be paid by the Governmental Unit(s) until the invoice has been approved by the Secretary of the LGC. (This also includes any progress billings.) [G.S. 159-34 and 115C-447] All invoices for Audit work shall be submitted in PDF format to the Secretary of the LGC for approval. The invoice marked 'approved' with approval date shall be returned to

the Auditor to present to the Governmental Unit(s) for payment. This paragraph is not applicable to contracts for audits of hospitals.

10. In consideration of the satisfactory performance of the provisions of this contract, the Governmental Unit(s) shall pay to the Auditor, upon approval by the Secretary of the LGC if required, the fee, which includes any costs the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (federal and state grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts. This does not include fees for any pre-issuance reviews that may be required by the NC Association of CPAs (NCACPA) Peer Review Committee or NC State Board of CPA Examiners (see Item 13).

11. If the Governmental Unit(s) has/have outstanding revenue bonds, the Auditor shall submit to LGC Staff, either in the notes to the audited financial statements or as a separate report, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the Auditor shall submit to LGC Staff simultaneously with the Governmental Unit's (Units') audited financial statements any other bond compliance statements or additional reports required by the authorizing bond documents, unless otherwise specified in the bond documents.

12. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, but not be limited to, the following information: (a) Management's Discussion and Analysis, (b) the financial statements and notes of the Governmental Unit(s) and all of its component units prepared in accordance with GAAP, (c) supplementary information requested by the Governmental Unit(s) or required for full disclosure under the law, and (d) the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board upon completion.

13. If the audit firm is required by the NC State Board, the NCACPA Peer Review Committee, or the Secretary of the LGC to have a pre-issuance review of its audit work, there shall be a statement in the engagement letter indicating the pre-issuance review requirement. There also shall be a statement that the Governmental Unit(s) shall not be billed for the pre-issuance review. The pre-issuance review shall be performed prior to the completed audit being submitted to LGC Staff. The pre-issuance review report shall accompany the audit report upon submission to LGC Staff.

14. The Auditor shall submit the report of audit in PDF format to LGC Staff. For audits of units other than hospitals, the audit report should be submitted when (or prior to) submitting the final invoice for services rendered. The report of audit, as filed with the Secretary of the LGC, becomes a matter of public record for inspection, review and copy in the offices of the LGC by any interested parties. Any subsequent revisions to these reports shall be sent to the Secretary of the LGC along with an Audit Report Reissued Form (available on the Department of State Treasurer website). These audited financial statements, excluding the Auditors' opinion, may be used in the preparation of official statements for debt offerings by municipal bond rating services to fulfill secondary market disclosure requirements of the Securities and Exchange Commission and for other lawful purposes of the Governmental Unit(s) without requiring consent of the Auditor. If the LGC Staff determines that corrections need to be made to the Governmental Unit's (Units') financial statements, those corrections shall be provided within three business days of notification unless another deadline is agreed to by LGC Staff.

15. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the

Secretary of the LGC, this contract may be modified or amended to include the increased time, compensation, or both as may be agreed upon by the Governing Board and the Auditor.

16. If an approved contract needs to be modified or amended for any reason, the change shall be made in writing and pre-audited if the change includes a change in audit fee (pre-audit requirement does not apply to charter schools or hospitals). This amended contract shall be completed in full, including a written explanation of the change, signed and dated by all original parties to the contract. It shall then be submitted to the Secretary of the LGC for approval. No change to the audit contract shall be effective unless approved by the Secretary of the LGC, the Governing Board, and the Auditor.

17. A copy of the engagement letter, issued by the Auditor and signed by both the Auditor and the Governmental Unit(s), shall be attached to this contract, and except for fees, work, and terms not related to audit services, shall be incorporated by reference as if fully set forth herein as part of this contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract shall take precedence. Engagement letter terms that conflict with the contract are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item 28 of this contract. Engagement letters containing indemnification clauses shall not be accepted by LGC Staff.

18. Special provisions should be limited. Please list any special provisions in an attachment.

19. A separate contract should not be made for each division to be audited or report to be submitted. If a DPCU is subject to the audit requirements detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not to be issued and the DPCU is included in the primary government audit, the DPCU shall be named along with the primary government on this audit contract. DPCU Board approval date, signatures from the DPCU Board chairman and finance officer also shall be included on this contract.

20. The contract shall be executed, pre-audited (pre-audit requirement does not apply to charter schools or hospitals), and physically signed by all parties including Governmental Unit(s) and the Auditor, then submitted in PDF format to the Secretary of the LGC.

21. The contract is not valid until it is approved by the Secretary of the LGC. The staff of the LGC shall notify the Governmental Unit and Auditor of contract approval by email. The audit should not be started before the contract is approved.

22. Retention of Client Records: Auditors are subject to the NC State Board of CPA Examiners' Retention of Client Records Rule 21 NCAC 08N .0305 as it relates to the provision of audit and other attest services, as well as non-attest services. Clients and former clients should be familiar with the requirements of this rule prior to requesting the return of records.

23. This contract may be terminated at any time by mutual consent and agreement of the Governmental Unit(s) and the Auditor, provided that (a) the consent to terminate is in writing and signed by both parties, (b) the parties have agreed on the fee amount which shall be paid to the Auditor (if applicable), and (c) no termination shall be effective until approved in writing by the Secretary of the LGC.

24. The Governmental Unit's (Units') failure or forbearance to enforce, or waiver of, any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

25. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the LGC.

26. E-Verify. Auditor shall comply with the requirements of NCGS Chapter 64 Article 2. Further, if Auditor utilizes any subcontractor(s), Auditor shall require such subcontractor(s) to comply with the requirements of NCGS Chapter 64, Article 2.

27. **Applicable to audits with fiscal year ends of June 30, 2020 and later.** For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct and Governmental Auditing Standards, 2018 Revision (as applicable). Financial statement preparation assistance shall be deemed a "significant threat" requiring the Auditor to apply safeguards sufficient to reduce the threat to an acceptable level. If the Auditor cannot reduce the threats to an acceptable level, the Auditor cannot complete the audit. If the Auditor is able to reduce the threats to an acceptable level, the documentation of this determination, including the safeguards applied, must be included in the audit workpapers.

All non-attest service(s) being performed by the Auditor that are necessary to perform the audit must be identified and included in this contract. The Governmental Unit shall designate an individual with the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the services and accept responsibility for the results of the services performed. If the Auditor is able to identify an individual with the appropriate SKE, s/he must document and include in the audit workpapers how he/she reached that conclusion. If the Auditor determines that an individual with the appropriate SKE cannot be identified, the Auditor cannot perform both the non-attest service(s) and the audit. See "Fees for Audit Services" page of this contract to disclose the person identified as having the appropriate SKE for the Governmental Unit.

28. **Applicable to audits with fiscal year ends of June 30, 2021 and later.** The auditor shall present the audited financial statements including any compliance reports to the government unit's governing body or audit committee in an official meeting in open session as soon as the audited financial statements are available but not later than 45 days after the submission of the audit report to the Secretary. The auditor's presentation to the government unit's governing body or audit committee shall include:

- a) the description of each finding, including all material weaknesses and significant deficiencies, as found by the auditor, and any other issues related to the internal controls or fiscal health of the government unit as disclosed in the management letter, the Single Audit or Yellow Book reports, or any other communications from the auditor regarding internal controls as required by current auditing standards set by the Accounting Standards Board or its successor;
- b) the status of the prior year audit findings;
- c) the values of Financial Performance Indicators based on information presented in the audited financial statements; and
- d) notification to the governing body that the governing body shall develop a "Response to the Auditor's Findings, Recommendations, and Fiscal Matters," if required under 20 NCAC 03 .0508.

29. Information based on the audited financial statements shall be submitted to the Secretary for the purpose of identifying Financial Performance Indicators and Financial Performance Indicators of Concern.

30. Applicable to charter school contracts only: No indebtedness of any kind incurred or created by the charter school shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.

31. All of the above paragraphs are understood and shall apply to this contract, except the following numbered paragraphs shall be deleted (See Item 16 for clarification).

32. The process for submitting contracts, audit reports and invoices is subject to change. Auditors and units should use the submission process and instructions in effect at the time of submission. Refer to the N.C. Department of State Treasurer website at <https://www.nctreasurer.com/state-and-local-government-finance-division/local-government-commission/submitting-your-audit>

33. All communications regarding audit contract requests for modification or official approvals will be sent to the email addresses provided on the signature pages that follow.

34. Modifications to the language and terms contained in this contract form (LGC-205) are not allowed.

FEES FOR AUDIT SERVICES

1. For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct (as applicable) and *Governmental Auditing Standards, 2018 Revision*. Refer to Item 27 of this contract for specific requirements. The following information must be provided by the Auditor; contracts presented to the LGC without this information will not be approved.

Financial statements were prepared by: ☒ Auditor ☐ Governmental Unit ☐ Third Party

If applicable: Individual at Governmental Unit designated to have the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the non-attest services and accept responsibility for the results of these services:

Name:

Title and Unit / Company:

Email Address:

David Stevens

Council Member/Smith, Stevens

dstevens@ssfcpa.net

OR Not Applicable ☐ (Identification of SKE Individual not applicable for GAAS-only audit or audits with FYEs prior to June 30, 2020.)

2. Fees may not be included in this contract for work performed on Annual Financial Information Reports (AFIRs), Form 990s, or other services not associated with audit fees and costs. Such fees may be included in the engagement letter but may not be included in this contract or in any invoices requiring approval of the LGC. See Items 8 and 13 for details on other allowable and excluded fees.

3. Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed 75% of the billings for the last annual audit of the unit submitted to the Secretary of the LGC. Should the 75% cap provided below conflict with the cap calculated by LGC Staff based on the billings on file with the LGC, the LGC calculation prevails. All invoices for services rendered in an audit engagement as defined in 20 NCAC .0503 shall be submitted to the Commission for approval before any payment is made. Payment before approval is a violation of law. (This paragraph not applicable to contracts and invoices associated with audits of hospitals).

PRIMARY GOVERNMENT FEES

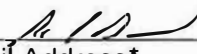
Primary Government Unit	City of Lenoir
Audit Fee	\$ 98 per hour per person
Additional Fees Not Included in Audit Fee:	
Fee per Major Program	\$
Writing Financial Statements	\$ 98 per hour per person
All Other Non-Attest Services	\$
75% Cap for Interim Invoice Approval (not applicable to hospital contracts)	\$ 36,382.00

DPCU FEES (if applicable)

Discretely Presented Component Unit	NA
Audit Fee	\$
Additional Fees Not Included in Audit Fee:	
Fee per Major Program	\$
Writing Financial Statements	\$
All Other Non-Attest Services	\$
75% Cap for Interim Invoice Approval (not applicable to hospital contracts)	\$

SIGNATURE PAGE

AUDIT FIRM

Audit Firm*	
S. Eric Bowman, PA	
Authorized Firm Representative (typed or printed)*	Signature*
S. Eric Bowman	
Date*	Email Address*
12/10/20	sericbowmanpa@bellsouth.net

GOVERNMENTAL UNIT

Governmental Unit*	
City of Lenoir	
Date Primary Government Unit Governing Board Approved Audit Contract* (G.S. 159-34(a) or G.S. 115C-447(a))	
Mayor/Chairperson (typed or printed)*	Signature*
Joe L Gibbons-Mayor	
Date	Email Address
	josephlgibbons@yahoo.com

Chair of Audit Committee (typed or printed, or "NA")	Signature
NA	
Date	Email Address

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1).
Not applicable to hospital contracts.

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.

Primary Governmental Unit Finance Officer* (typed or printed)	Signature*
Donna Bean	
Date of Pre-Audit Certificate*	Email Address*
	dbean@ci.lenoir.nc.us

SIGNATURE PAGE – DPCU
(complete only if applicable)

DISCRETELY PRESENTED COMPONENT UNIT

DPCU*	
NA	
Date DPCU Governing Board Approved Audit Contract* (Ref: G.S. 159-34(a) or G.S. 115C-447(a))	
DPCU Chairperson (typed or printed)*	Signature*
Date*	Email Address*

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

DPCU – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1).
Not applicable to hospital contracts.

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.

DPCU Finance Officer (typed or printed)*	Signature*
Date of Pre-Audit Certificate*	Email Address*

Remember to print this form, and obtain all
required signatures prior to submission.

PRINT

S. Eric Bowman, P.A.

CERTIFIED PUBLIC ACCOUNTANT

403 South Green Street
P.O. Box 1476
Morganton, NC 28680-1476
Telephone (828) 438-1065
Fax (828) 438-9117

December 10, 2020

City Council
City of Lenoir
Lenoir, North Carolina

We are pleased to confirm our understanding of the services we are to provide City of Lenoir for the year ended June 30, 2021. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements, of City of Lenoir as of and for the year ended June 30, 2021. Accounting standards, generally accepted in the United States, provide for certain required supplementary information (RSI) such as management's discussion and analysis (MD&A), to supplement City of Lenoir's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational economic, or historical context. As part of our engagement, we will apply certain limited procedures to City of Lenoir's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis
- 2) Law Enforcement Officer's Separation Allowance Schedules of Changes in Total Pension Liability and Total Pension Liability as a Percentage of Covered Payroll
- 3) Changes in Total OPEB Liability and Related Ratios
- 4) Proportionate Share of Net Pension Liability and Contributions to Retirement System

We have also been engaged to report on supplementary information other than RSI that accompanies City of Lenoir's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of

America and will provide an opinion on it in relation to the financial statements as a whole.

- 1) Individual fund financial statements
- 2) Budgeting Schedules
- 3) Other Schedules
- 4) Schedule of expenditures of federal and state awards

The statistical section accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that other information.

Audit Objectives

The objective of our audit is the expression of an opinion as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the first paragraph when considered in relation to the basic financial statements taken as a whole. The objective also includes reporting on -

- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996, the Uniform Guidance, *Audits of States, Local Governments, and Non-Profit Organizations*, and the State Single Audit Implementation Act.

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states (1) that the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of The Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of The Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and the State Single Audit Implementation Act and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the City Council of City of Lenoir. We cannot provide assurance that unmodified

opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinion on the financial statements or the Single Audit compliance opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue reports, or may withdraw from this engagement.

Audit Procedures - General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform the appropriate level of management of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential and of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements, schedule of federal and state awards; compliance with laws, regulations, contracts, and grant agreements, and other responsibilities required by generally accepted auditing standards.

Audit Procedures - Internal Controls

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by The Uniform Guidance and the State Single Audit Implementation Act, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal and state award program. However, our tests will be less in scope that would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to The Uniform Guidance and the State Single Audit Implementation Act.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and The Uniform Guidance and the State Single Audit Implementation Act.

Audit Procedures - Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of City of Lenoir's compliance with applicable laws and regulations and the provisions of contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance and the State Single Audit Implementation Act requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the OMB Compliance Supplement and the Audit Manuals for Government Auditing in North Carolina for the types of compliance requirements that could have a direct and material effect on each of City of Lenoir's major programs. The purpose of these procedures will be to express an opinion on City of Lenoir's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to The Uniform Guidance and the State Single Audit Implementation Act.

Other Services

We will also assist in preparing the financial statements, schedule of expenditures of federal and state awards, and related notes of City of Lenoir in conformity with U.S. generally accepted accounting principles and the Uniform Guidance based on information provided by you. We will also prepare conversion entries and a cash to accrual entries. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statements, schedule of expenditures of federal and state awards, and related notes and various journal entries previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Management Responsibilities

Management is responsible for;

- (1) designing, implementing, establishing and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error including internal controls over federal and state awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met;
- (2) following laws and regulations;
- (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and
- (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements.

You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal and state awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal and state statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with:

- (1) Access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements
- (2) Access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance and State Single Audit Implementation Act
- (3) Additional information that we may request for the purpose of the audit, and
- (4) Unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving:

- 1) Management
- 2) Employees who have significant roles in internal control
- 3) Others where the fraud or illegal acts could have a material effect on the financial statements.

Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, contracts, and grant agreements, or abuse that we report. Additionally, as required by The Uniform Guidance and the State Single Audit Implementation Act, it is management's responsibility to evaluate and monitor noncompliance with federal and state statutes, regulations, and the terms and conditions of federal and state awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan. The summary schedule of prior audit findings should be available for our review on July 15, 2021.

You are responsible for identifying all federal and state awards received and understanding and complying with the compliance requirements and for assisting us in preparation of the schedule of expenditures of federal and state awards (including notes and noncash assistance received) in conformity with the Uniform Guidance and the State Single Audit Implementation Act. You agree to include our report on the schedule of expenditures of federal and state awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal and state awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal and state awards that includes our report thereon or make the audited financial statements readily available to intended users of the schedule of expenditures of federal and state awards no later than the date the schedule of expenditures of federal state awards is issued with our report thereon. Your responsibilities include acknowledging to us in the written representation letter that;

- (1) you are responsible for presentation of the schedule of expenditures of federal and state awards in accordance with the Uniform Guidance and State Single Audit Implementation Act;
- (2) you believe the schedule of expenditures of federal and state awards, including its form and content, is stated fairly in accordance with the Uniform Guidance and State Single Audit Implementation Act;

- (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and
- (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal and state awards.

You are responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon or make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon. Your responsibilities include acknowledging to us in the written representation letter that;

- (1) you are responsible for presentation of the supplementary information in accordance with GAAP;
- (2) that you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP;
- (3) that the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and
- (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal and state awards, and related notes and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal and state awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal and state awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

Engagement Administration, Fees and Other

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider.

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal and state awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal clearinghouse. We will coordinate with you the electronic submission and certification. If applicable, we will provide copies of our report for you to include with the reporting package you will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audits.

We will provide copies of our reports to City of Lenoir; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of S. Eric Bowman, P.A. and constitutes confidential information. However,, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to any federal or state agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of S. Eric Bowman, P.A. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The workpapers for this engagement will be retained for a minimum of five years after the date the auditors' report is issued or for any additional period requested by oversight agencies. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the workpapers.

We expect to begin our audit on approximately June 1, 2021 and to issue our reports no later than October 31, 2021. Our fee for these services will be \$98 per hour per person. Our invoices for these fees will be rendered each month as work progresses.

Government Auditing Standards require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. Our 2017 peer review report accompanies this letter.

We appreciate the opportunity to be of service to City of Lenoir and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed audit contract and return it to us.

Very truly yours,



S. Eric Bowman, P.A.
Certified Public Accountant

Donna Bean

Title

Date

Joe Gibbons

Title

Date

Report on the Firm's System of Quality Control

August 7, 2017

To the Shareholder of S. Eric Bowman, P.A. and the Peer Review Executive Committee of the North Carolina Association of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of **S. Eric Bowman, P.A.** in effect for the year ended April 30, 2017. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in the System Review as described in the Standards may be found at www.aicpa.org/prsummary. The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

Required Selections and Considerations

An engagement selected for review included an engagement performed under *Government Auditing Standards*, including a compliance audit under the Single Audit Act.

As a part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

Opinion

In our opinion, the system of quality control for the accounting and auditing practice of **S. Eric Bowman, P.A.** in effect for the year ended April 30, 2017, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency (ies)* or fail. **S. Eric Bowman, P.A.** has received a peer review rating of *pass*.

Ray, Bumgarner, Kingshill & Assoc., P.A.

CITY OF LENOIR
COUNCIL ACTION FORM

I. Agenda Item:

Budget Amendments - Request for amendments to be made to the annual budget ordinance for the fiscal year ending June 30, 2021

II. Background Information:

Request for amendments to be made to the annual budget ordinance for the fiscal year ending June 30, 2021 as follows:

- **Budget Amendment:**
 - **Item 1: Adjustments to the General Fund Budget to allocate COVID reimbursement.**
 - **Item 2: Adjustments to the Water Fund Budget to allocate COVID reimbursement.**
 - **Item 3: Adjustments to the Main Street Budget to allocate COVID reimbursement.**
 - **Item 4: Adjustments to the Lenoir Tourism Development Authority Budget to allocate COVID reimbursement.**
 - **Item 5: Adjustments to the General Fund Budget to allocate funding for the NC Rural Center Grant reimbursement for Woodgrain Millwork.**
 - **Item 6: Adjustments to the General Fund Budget to allocate donation for improve the bathrooms and deck at the Broyhill Walking Park.**

Staff Recommendation:

Approve as requested

III. Reviewed by:

City Attorney:

Finance Director: *Danna Bean*

Public Works/Public Utilities Director:

Planning Director:

**2020-2021 Fiscal Year
Budget Amendment Ordinance 2021-01
1/19/2021**

ITEM 1: ADJUSTMENTS TO THE GENERAL FUND BUDGET TO ALLOCATE COVID REIMBURSEMENT.

ACCOUNT	TYPE	AMOUNT OF INCREASE
GENERAL FUND GRANT REVENUE	REVENUE	314,054.98
4120 ADMIN	EXPENDITURE	50,000.00
4130 FINANCE	EXPENDITURE	65,000.00
4250 VEHICLE SERVICES	EXPENDITURE	404.98
4260 BLDG MAINTENANCE	EXPENDITURE	10,050.00
4270 ENGINEERING	EXPENDITURE	9,600.00
4310 POLICE SUPPORT SERVICES	EXPENDITURE	30,000.00
4311 POLICE DETECTIVES	EXPENDITURE	5,590.00
4312 POLICE PATROL	EXPENDITURE	15,000.00
4340 FIRE SUPPORT	EXPENDITURE	50,000.00
4341 FIRE SUPPRESSION	EXPENDITURE	15,000.00
4510 STREET ADMINISTRATION	EXPENDITURE	20,000.00
4511 STREET MAINTENANCE	EXPENDITURE	2,500.00
4512 STREET TRAFFIC CONTROL	EXPENDITURE	500.00
4710 SANITATION	EXPENDITURE	2,500.00
4740 CEMETERIES	EXPENDITURE	2,300.00
4910 PLANNING	EXPENDITURE	6,000.00
6120 RECREATION ADMINISTRATIVE	EXPENDITURE	4,000.00
6121 AQUATIC/FITNESS CENTER	EXPENDITURE	19,000.00
6122 MULBERRY CENTER	EXPENDITURE	1,400.00
6123 ML KING CENTER	EXPENDITURE	2,080.00
6130 PARKS	EXPENDITURE	3,130.00
TOTAL GENERAL FUND		314,054.98

ITEM 2: ADJUSTMENTS TO THE WATER FUND BUDGET TO ALLOCATE COVID REIMBURSEMENT.

ACCOUNT	TYPE	AMOUNT OF INCREASE
WATER FUND GRANT REVENUE	REVENUE	25,400.00
7130 RHODHISS PLANT	EXPENDITURE	90.00
7131 WATER DISTRIBUTION	EXPENDITURE	7,500.00
7132 WATER RESOURCES	EXPENDITURE	1,740.00
7133 WATER ADMIN	EXPENDITURE	9,000.00
7140 WASTEWATER COLLECTION	EXPENDITURE	3,850.00
7141 WASTEWATER PRETREATMENT	EXPENDITURE	2,000.00
7142 GUNPOWDER WASTEWATER PL	EXPENDITURE	660.00
7143 LOWER CREEK WASTEWATER PL	EXPENDITURE	560.00
TOTAL WATER FUND		25,400.00

ITEM 3: ADJUSTMENTS TO THE MAIN STREET BUDGET TO ALLOCATE COVID REIMBURSEMENT.

ACCOUNT	TYPE	AMOUNT OF INCREASE
MAIN STREET GRANT REVENUE	REVENUE	8,200.00
4920 MAIN STREET	EXPENDITURE	8,200.00

ITEM 4: ADJUSTMENTS TO THE LENOIR TOURISM DEVELOPMENT AUTHORITY FUND BUDGET TO ALLOCATE COVID REIMBURSEMENT.

ACCOUNT	TYPE	AMOUNT OF INCREASE
4990 LTDA COVID GRANT	REVENUE	18,000.00
4990 LTDA COVID EXPENDITURES	EXPENDITURE	18,000.00

ITEM 5: ADJUSTMENTS TO THE GENERAL FUND BUDGET TO ALLOCATE FUNDING FOR THE NC RURAL CENTER GRANT REIMBURSEMENT FOR WOODGRAIN MILLWORK.

ACCOUNT	TYPE	AMOUNT OF INCREASE
3326 RURAL CENTER GRANT	REVENUE	55,000.00
4110 ECONOMIC DEVELOPMENT	EXPENDITURE	55,000.00

ITEM 6: ADJUSTMENTS TO THE GENERAL FUND BUDGET TO ALLOCATE FUNDING FOR DONATION TO IMPROVE BATHROOMS AND DECK AT THE BROYHILL WALKING PARK.

ACCOUNT	TYPE	AMOUNT OF INCREASE
3833 CONTRIBUTION FOR BEAUTIFICATION PROJECT	REVENUE	100,000.00
6134 CAPITAL IMPROVEMENTS	EXPENDITURE	100,000.00

CITY OF LENOIR
COUNCIL ACTION
FORM January 19, 2021

I. Agenda Item:

Omnibus ordinance amendments relating to and required under N.C.G.S. 160D.

II. Background Information:

See attached memo, ordinance, and supporting documents.

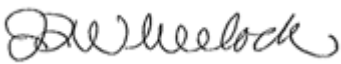
III. Staff & Planning Board Recommendation:

Adoption of the attached ordinance.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director:___  ___

PLANNING DEPARTMENT MEMORANDUM

CITY OF LENOIR, 801 WEST AVENUE, LENOIR, NC 28645

TO: Scott Hildebran, City Manager
FROM: Jenny Wheelock, AICP, Planning Director
DATE: December 29, 2020
SUBJECT: Proposed Ordinance Amendments related to NCGS 160D
CC: T.J. Rohr, City Attorney

The attached ordinance amends Chapters 1, 2, 4, 9, 10, and Appendix A with technical corrections and modernization updates. These changes were prompted by a review of our ordinances against the newly adopted N.C.G.S. Chapter 160D, which consolidated and updated previously existing statutes in Chapter 160A, Article 19 related to development within cities and towns in NC.

The attached ordinance does not address streets (Chapter 18) or subdivisions (Chapter 19), which will also need to be updated. Upon review, staff noted these chapters needed some additional research in order to correct some long-standing frustrations related to subdivision plats and the process for construction and dedication of streets. Planning Staff is working with Public Works to coordinate proposed changes, which must be adopted by July 2021.

The Planning Board workshopped this ordinance with staff in October, and recommended approval at their November meeting.

A few highlights (page numbers refer to the attached strike-through/underlined ordinance):

- What we have always called “Conditional Use Permits” must now be called “Special Use Permits” – this change is reflected throughout the ordinance
- Conflict of Interest Standards are detailed, and differ slightly between legislative and quasi-judicial decisions. These apply both to advisory boards and the City Council. (p. 4-6)
- Definitions and appeal processes are made consistent across various chapters, instead of having different procedures for housing, floodplain, and zoning enforcement. The Board of Adjustment is designated as the appeals board for all administrative decisions on development ordinances.
- Administrative Modifications – the slight administrative modifications that staff approves between conceptual site approval and final building permits have been codified and defined. (p. 54-55 for Conditional Zoning districts and p. 59-60 for Special Use Permits)
- Planning Board Review of Special Use Permits – note “preliminary forum” language (p. 58)

Staff relied heavily on materials developed by the UNC School of Government in preparing this ordinance. One of the most helpful documents is a checklist, attached, that lists the things that local governments must change, and the permissive things that we may choose to do. The attached version includes staff’s notes on how each item included in the revised statutes is addressed in the recommended changes.

G.S. Chapter 160D Checklist: City of Lenoir

(Staff note: This checklist was developed by the UNC School of Government to help local governments implement required and optional changes based on the new land use law for NC, Chapter 160D. Lenoir Planning staff modified the checklist to reflect the specific ways in which the City of Lenoir is responding to the new legislation. Staff notes are indicated by underlining.)

The checklist has specific notations, which are accompanied by specific icons, as follows:

- ☐ Denotes legislative changes for which local governments **must** take action (statutory citations are in parentheses)
- ☐ Denotes permissive legislative changes for which local governments **may** take action
- Denotes notable legislative changes that do not require local action but of which local governments must **be aware**

I. Terminology and Citations [Chapter 1, Section III]

- ☐ **Must** update any references to provisions in G.S. Chapter 160A or 153A to indicate relevant provisions in Chapter 160D. (See appendixes B and C in the Chapter 160D book.)

All proposed text amendments include updates to references changed by Chapter 160D (prior references to any statute falling under Article 19 in Chapter 160A). Section 1 of the ordinance authorizes the Clerk to update any references that were not included in text revisions.

- ☐ **Must** align ordinance terminology with Chapter 160D terminology for *conditional zoning* and *special use permits*; must delete use of the terms *conditional use permit*, *special exception*, *conditional use district zoning*, and *special use district zoning*. (See G.S. 160D-102.)

Lenoir currently uses the terms “conditional zoning” for the legislative process of creating a zoning overlay district with specific conditions and “conditional use permit” for a quasi-judicial permit that is required for certain uses in certain districts (ex. daycares in residential districts). Our conditional zoning district provisions are consistent with the new law. All references to quasi-judicial “conditional use permits” have been updated to reflect the terminology required by the new law, which is “special use permit,” and definitions have been updated. This change does not materially impact the process for either type of land use decision, nor does it change prior approvals.

- ☐ **Must** ensure that ordinance definitions for the following terms are not inconsistent with definitions provided in state law and regulation: *building*, *dwelling*, *dwelling unit*, *bedroom*, and *sleeping unit*. (G.S. 160D-706; S.L. 2019-111, § 1.17.)

Definitions in the Housing chapter (Chapter 10) and Zoning chapter (Appendix A) have been updated to reflect these terms. Also updated terminology and regulations for group dwellings (f/k/a “rooming houses” in the Housing chapter), so that the standards in the housing chapter reference back to the zoning ordinance, and the two chapters consistently define these uses, in accordance with the state definitions.

- **May** align ordinance terminology with Chapter 160D terminology, including for the following terms: *administrative decision, administrative hearing, determination, developer, development, development approval, development regulation, dwelling, evidentiary hearing, legislative decision, legislative hearing, planning and development regulation jurisdiction, and quasi-judicial decision.* (G.S. 160D-102.)

Added definitions to Zoning Ordinance consistent with G.S. 160D-102 for: administrative decision, determination, developer, development, development approval, dwelling, evidentiary hearing, legislative decision, legislative hearing, planning and development regulation jurisdiction, and quasi-judicial decision. Also added a definition for “down-zone” from 160D-601(d).

Added definitions to Housing Ordinance (Ch. 10) for: administrative hearing, determination

II. Geographic Jurisdiction [Chapter 2, Section I]

- For extension of extraterritorial jurisdiction (ETJ), a municipality **must** provide mailed notice thirty days prior to ETJ hearing; municipality **may** hold one hearing (with single mailed notice) regarding ETJ and initial zoning amendment. (G.S. 160D-202(d).)

The City does not have any codified process for extending the ETJ, and would follow all statutory requirements for such extension if we ever wanted to. Since nothing in the current ordinance conflicts with the new law, no changes are proposed.

- Municipality **may** hold hearings in anticipation of change in jurisdiction. (G.S. 160D-204.)

For properties in the ETJ, Sec. 504 “Annexation” specifies that any requested change to the zoning must go through the re-zoning process. Annexations do not require review by the Planning Board, but initial zoning or zoning amendments (for ETJ properties that are already assigned City zoning) go through the normal zoning map amendment process. Generally, we proceed with Planning Board meetings on zoning changes prior to the official annexation of the property. The code is largely silent on the process for annexation and initial zoning. Nothing in the code conflicts the new law, so no changes are proposed.

- For a parcel in two jurisdictions, the owner and the jurisdictions **may** agree for development regulations from one jurisdiction to apply to the entire parcel. (G.S. 160D-203.)

This is done by ordinance on a case-by-case basis, in conjunction with the other jurisdictions. No amendments needed.

- In ETJ, the county **may** elect to exercise development regulations that the municipality is not exercising. (G.S. 160D-202(b).)

No amendments needed.

- For counties, the county **may** apply zoning and subdivision regulations to all or part of the county's planning and development regulation jurisdiction. Cities with zoning **must** apply zoning jurisdiction-wide. (G.S. 160D-201; S.L. 2020-25.)

The City applies zoning city-wide. No amendments needed.

III. Boards [Chapter 2, Section II]

[Staff Note: This section of 160D addresses several specific boards, and then allows for the creation of other advisory boards not mentioned. The boards specifically addressed in 160D are as follows: Planning Board, Board of Adjustment, Historic Preservation Commission, Appearance Commission, and Housing Appeals Board. Lenoir has all of these boards except for an Appearance Commission. The statute also grants authority to establish additional advisory boards.]

A. In General

- **Must** adopt broadened conflict-of-interest standards for governing and advisory boards. (G.S. 160D-109.)

Conflict of interest standards for the governing board are codified under Chapter 2, Article 2 "City Council," specifically as Sec. 2-27, 2-28, 2-29, and 2-30. Conflict of interest standards for appointed boards are codified under Chapter 2, Article V "Boards, Commissions and Departments," in Sec. 2-182, 2-184, and 2-185. Previous provisions for the BOA found in Sec. 1309-1312 have been moved to Article V for consistency.

- **Must** keep minutes of proceedings of each board. (G.S. 160D-308.)

This requirement is codified under Chapter 2, Article V "Boards, Commissions and Departments," in Sec. 2-186(b). Previous provisions for the BOA found in Sec. 1309-1312 have been moved to Article V and amended for consistency.

- **Must** have each board member take an oath of office before starting his or her duties. (G.S. 160D-309.)

This requirement is codified under Chapter 2, Article V "Boards, Commissions and Departments," in Sec. 2-181.

- **Must** update ETJ population estimate, at least with each decennial census (also calculation for proportional representation is simplified and process for appointment is clarified). (G.S. 160D-307.)

Sec. 2-196 establishes a Planning Board, and provides for proportional representation. State law reference updated. Sec. 1309 of the Zoning Ordinance, "Establishment of a Board of Adjustment" previously outlined proportional representation (1/6 of regular members). Proportional representation language remains unchanged, but was moved to Chapter 2, Article 5 for consistency.

Current planning staff does not have access or record of the proportional ETJ population estimate that should have been done in 2010, but we currently have 1 ETJ member on both the Planning Board and Board of Adjustment. When we receive counts from the 2020 Census, planning staff will establish and

maintain moving forward ETJ population estimates, and recommend to the City Council to appoint additional ETJ representatives as deemed necessary.

- ☐ **Must** provide proportional representation for ETJ on preservation commission if any districts or landmarks are designated in the ETJ. (G.S. 160D-307.)

Sec. 1701 “Historic Preservation Commission” designates the Lenoir Planning Board to serve as the City’s preservation commission. Currently, there are no local districts or landmarks designated in the ETJ, so this rule is not relevant. However, because the Planning Board is required to have proportional representation, the HPC also will have such representation. No changes to ordinance needed.

- ☐ **May** have detailed rules of procedure for each board; **may** be adopted by governing board; if not, then **may** be adopted by individual board; if adopted, **must** maintain board rules of procedure (by clerk or other officer as set by ordinance) and **must** post board rules of procedure to website, if the jurisdiction has a website. (G.S. 160D-308.)

This permission is codified under Chapter 2, Article V “Boards, Commissions and Departments,” in Sec. 2-186(a). The boards staffed by the Planning Department all adopt their own rules of procedure, and recently all three boards moved to adopt one set of Rules to govern all three land development boards. These updated rules are provided for your information.

- ☐ **May** establish reasonable procedures to solicit, review, and make appointments; governing board typically makes appointments but may delegate that appointment-making authority. (G.S. 160D-310.)

Section 2, Article V “Boards, Commissions, and Departments” establishes that Council appoints board members. The Mayor and Council have made updates to the process of board member appointments in recent years, but this is handled by policy not through ordinance. Since our code does not conflict with the state statutes on the process of appointments, no changes are proposed.

- ☐ **May** establish additional advisory boards related to development regulations. (G.S. 160D-306.)

Additional boards would be established through ordinance, as deemed necessary, consistent with the statutes. No changes proposed at this time.

B. Planning Board

- ☐ **May** assign to planning board the coordination of citizen engagement for planning. (G.S. 160D-301.)

Updated language under Sec. 2-201 relating to the function of the Planning Board, and included the coordination of citizen engagement in the board’s duties.

- ☐ **May** assign planning board to serve as preliminary forum for review and comment on quasi-judicial decisions, provided that no part of the preliminary forum or recommendation may be used as a basis for the deciding board. (G.S. 160D-301.)

The current process for quasi-judicial special use permits (f/k/a conditional use permits) includes review and comment by the Planning Board. Updated language under Sec. 2-201 relating to the function of the Planning Board to reflect the scope of this review function. Updated language under Sec. 900.3 relating to special use permits.

C. Board of Adjustment

- **May** assign board of adjustment to hear and decide matters under any development regulation, not just zoning. (G.S. 160D-302.)

Previous provisions for the BOA found in Sec. 1309-1312 have been moved to Chapter 2, Article V “Boards, Commissions, and Departments” for consistency, and powers and duties are expanded to include appeals of interpretations/decisions by the Planning Department related to any development ordinance (updates proposed to Chapters 4 and 9 as well). Future amendments to the subdivision ordinance will include BOA as the appeals board.

BOA hears appeals and variances. Deleted provisions related to temporary manufactured homes, because the new temporary healthcare structure provisions in the statutes and our code meets this need.

- **May** assign duties of housing appeals board to board of adjustment. (G.S. 160D-305.)

In 2014, ordinance amendments related to code enforcement established that appeals of decisions and orders of the housing inspector go to the board of adjustment. Updates to Sec. 10-26 clarify that the BOA is serving as the “housing appeals board” and state law references are updated.

Land Use Administration [Chapter 2, Section III]

D. In General

- **Must** incorporate new staff conflict-of-interest standards into ordinance or policy. (G.S. 160D-109.)

Current City of Lenoir personnel policy addresses some of these standards for all employees. Proposed amendments would codify conflict of interest standards specifically for staff who administrate development regulations, using the specific language from 160D-109 to ensure compliance. See Chapter 2, Article V “Boards, Commissions and Departments,” Sections 2-183, 2-184, and 2-185.

- **Must** maintain in paper or digital format current and prior zoning maps for public inspection. (G.S. 160D-105.)

Updated Secs. 500-501 to reflect updated statutes.

- **Must** maintain in paper or digital format any state or federal agency maps incorporated by reference into the zoning map. (G.S. 160D-105.)

Incorporate FIRM maps by reference, revisions to Sec. 9-22 in the Flood Damage Prevention ordinance.

- **May** enact ordinances, procedures, and fee schedules relating to administration and enforcement of development regulations. (G.S. 160D-402(b).)

This is the bulk of our ordinances, and the bulk of the amendments relate to procedures on administration and enforcement of development regulations. Updates to Article XII “Administration” are proposed to clarify and update administration and enforcement procedures related to zoning, but all of the proposed changes fall under this general authority.

- **May** charge reasonable fees for support, administration, and implementation of development regulation; **must** use any such fees for that purpose, not for other purposes. (G.S. 160D-402(d).)

We currently charge fees for map amendments, special use permits, variances, street closures, major subdivision plats, minor plats, zoning and sign permits, floodplain permits, and annual manufactured home park licenses. Revenues from fees account for about 14% of Planning’s budget.

E. Enforcement

- **Must** issue notices of violation (NOVs) in conformance with statutory procedures (must deliver to permittee and landowner if different; may deliver to occupant or person undertaking the activity; delivery by hand, email, or first-class mail; may be posted onsite; administrator to certify NOV for the file.) (G.S. 160D-404(a).)

Zoning Sec. 1307 updated to follow statutory procedures for notification, previous zoning standards were insufficient to meet statutory standards. [Housing chapter also updated to reflect statutory procedures for housing enforcement (Sec. 10-30; 10-31 – state law reference 160D-1206).]

- If inspecting, **must** enter the premises during reasonable hours and upon presenting credentials; **must** have consent of premises owner or an administrative search warrant to inspect areas not open to the public. (G.S. 160D-403(e).)

Updated Housing chapter (Sec. 10-29 “Right of Access”) and Zoning chapter (Sec. 1300 “Administration and Enforcement”) to amend and add language consistent with G.S. 160D-403(e).

- For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)

Updated Secs. 820.6 and 900.7 in the Zoning ordinance related to Conditional Zoning and Special Use Permits. Added Sec. 1307.2 for the revocation of zoning permits.

- **May** perform inspections for other development approvals to ensure compliance with state law, local law, and the terms of the approval; **must** perform (or contract for) inspections for building permits. (G.S. 160D-1113; -403(e).)

The City delegates enforcement of Chapter 4, “Building and Building Regulations” to Caldwell County Building Inspections (Sec. 4-26 “Delegation of enforcement to Caldwell County Building Inspector”), which satisfies this requirement for performing inspections for building permits. Non-material updates

to Chapter 4 are proposed consistent with Chapter 160D, since the Building Inspectors are working from the authority of the City's adopted ordinance.

- **May** perform inspections for general code compliance and enforcement (inspections unrelated to a development approval). (G.S. 160D-402(b).)

Sec. 1300 amended to reflect scope and limitations for inspections.

- **May** require a certificate of compliance or occupancy to confirm that permitted work complies with applicable laws and terms of the permit; still **must** require certificate of occupancy for work requiring a building permit. (G.S. 160D-403(g).)

The City does not currently require a certificate of compliance or occupancy to verify compliance – we use traditional code enforcement and reference the approved zoning permit and items out of compliance if necessary. We work closely with Caldwell County Building Inspections to utilize holds on inspections and certificates as necessary. Chapter 4 Building (delegated to CC Building Inspections) requires a C/O for work requiring a permit. No changes proposed.

- **May** issue stop-work orders for illegal or dangerous work or activity, whether related to a permit or not. (G.S. 160D-404(b).)

Deleted Sec. 713 "Stop Orders" related to stop work orders and added Sec. 1307.1 "Stop Work Orders" consistent with G.S. 160D-404(b) to bring ordinance up to date (not sure why this provision was previously located in Article VII instead of Article XIII with the rest of the administration and enforcement provisions).

- **May** continue to use general enforcement methods, including civil penalties, fines, court ordered actions, and criminal prosecution. (G.S. 160D-404(c).)

Most general enforcement methods are outlined in Section 1-15, "Civil and Criminal Penalties," and no changes are proposed at this time. This section was last amended in 2014.

- △ **Be aware** that a local government must bring a court action in advance of the applicable five- and seven-year statutes of limitation. (G.S. 1-51 and -49; established prior to Chapter 160D.)

This does not require any code revisions. Enforcement staff is aware of the statute of limitations – when violations are found that are past the statute of limitations for court action, staff can still engage in most of the steps of enforcement activity such as sending NOVs, requiring abatement within a specified time, and writing civil penalties. The limitation applies to court action only.

- △ **Be aware** that a local government must comply with existing rules for uses that were previously nonconforming situations. If a use loses its nonconforming status, by amortization or change of use or otherwise, the local government must bring an enforcement action within ten years of the loss of nonconforming status. (160D-1405(c1); established prior to Chapter 160D.)

This does not require any code revisions. Enforcement staff is aware of the statute of limitations, and address non-conforming issues promptly to avoid issues under this limitation of power. Staff successfully applied amortization enforcement on trailer parks throughout the City in 2014, shutting 4 parks down without issue due to non-compliance with an amortization clause requiring certain updates by 2012 (enforcement occurred in 2014 and 2015).

IV. Substance of Zoning Ordinance [Chapter 3, Section I]

- ☐ **Must** maintain current and prior zoning maps for public inspection (local government clerk or other office may be the responsible office); **may** adopt and maintain in paper or digital format. (G.S. 160D-105.)

Sec. 500 amended to specify both current and prior zoning maps are maintained by the Planning Department, official zoning map maintained in both paper and digital formats.

- ☐ **Must** eliminate conditional use district zoning; existing conditional use district zoning converts to conditional district upon adoption of updated local ordinances or July 1, 2021. (G.S. 160D-703; S.L. 2020-25; S.L. 2019-111, § 2.9(b).)

The City eliminated this type of zoning in 2015 (we called it “special use district” zoning), but provided that previously adopted special use districts remained in full force and effect. Revisions proposed to Sec. 502(r) clarify that all special use districts still in effect upon adoption of the revisions are automatically converted to conditional districts.

- ☐ **Must** not set a minimum square footage for structures subject to the One- and Two-Family Residential Building Code. (G.S. 160D-703; S.L. 2019-174.)

The City does not set any minimum square footage for one- and two- family residential dwellings. The minimum housing ordinance sets minimum square footage requirements for sleeping quarters for group housing and for bedrooms based on occupancy. Staff believes these are legally permissive requirements and do not result in a minimum square footage for the structures themselves as intended by this statute. No changes proposed.

- ☐ **May** incorporate maps officially adopted by state or federal agencies (such as flood-insurance rate maps (FIRMs)) into the zoning map; **may** incorporate *the most recent officially adopted version* of such maps so that there is no need for ordinance amendment for subsequent map updates; **must** maintain current effective map for public inspection; **may** maintain in paper or digital format. (G.S. 160D-105.)

Updates are proposed to Chapter 9 “Flood Damage Prevention” Sec. 9-22 to clarify the adoption of FIRMs by reference and include the most recently adopted version. Assigns the Planning Department the duty of maintaining a digital or paper copy of the maps. The state actually maintains a digital record of the map, and the planning department has hard copies on file as well.

- ☐ **May** require certain dedications and performance guarantees for zoning approvals to the same extent as for subdivision approvals. (G.S. 160D-702.)

We currently require sidewalk construction (or a payment-in-lieu) with easement dedication for many new commercial projects and substantial improvements, as a zoning standard (Sec. 714). No changes proposed.

- **May** use form-based codes. (G.S. 160D-703(a)(3).)

The design standards found in Sec. 714 of the Zoning Ordinance have elements of form-based code, but generally Lenoir uses conventional zoning standards. No changes are proposed at this time, but form-based regulations could make sense in future zoning overlays or corridor plans.

- **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define “minor modification” by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

Given the conceptual nature of plans approved through the conditional zoning and special use permit process, staff has always employed some level of administrative minor modifications (slight changes to parking layout, relocation of a landscape island, etc. – never changes to use or density). With the adoption of Chapter 160D, authorization for this type of administrative modification ability must be specifically defined. Changes are proposed to Sec. 820.6 (Conditional Zoning) and Sec. 900.5 (Special Use Permits) that give staff defined authorization and standards to modify plans, and the process for amending plans/approving major modifications is also prescribed.

- **May** apply zoning standards jurisdiction-wide, not just on a zoning district by zoning district basis. (G.S. 160D-703(d).)

Some of our zoning standards do apply jurisdiction-wide, such as rules about sight triangles and bufferyard standards. No changes proposed.

- **May** regulate development over navigable waters, including floating homes. (G.S. 160D-702(a).)

Not relevant for our jurisdiction; no changes proposed.

V. Substance of Other Development Ordinances [Chapter 3, Section II]

- **Must** conform subdivision performance guarantee requirements with statutory standards. (G.S. 160D-804.1; S.L. 2020-25; S.L. 2019-79 (S.B. 313))

Updates to Sec. 19-36 “Guarantee of Improvements” will be proposed in accordance with the language in 160D-804.1 in an upcoming overhaul to the subdivision ordinance (Chapter 19)

- **Must** conform subdivision procedures for expedited review of certain minor subdivisions. (G.S. 160D-802, established prior to G.S. Chapter 160D.)

Upcoming overhaul to the subdivision ordinance (Chapter 19) will address expedited review for certain minor subdivisions.

- ☐ **Must** not require a developer, as a condition to subdivision approval, to bury a power line existing above ground and outside of property to be subdivided. (G.S. 160D-804; S.L. 2019-174.)

The City of Lenoir currently does not have any requirements relating to burying power lines, either as a condition of subdivision approval or as a condition of development. No changes are necessary, but staff and Council should refrain from adding conditions in violation of this statute to individual decisions about subdivision or development approvals.

- ☐ **Must** exempt farm use on bona fide farm in ETJ from city zoning to the same extent it would be exempt from county zoning; Chapter 160D clarifies that other municipal development regulations may still apply. (G.S. 160D-903(c).)

Added Sec. 500.1 to address bona fide farm uses in the ETJ, under section that talks about “Jurisdiction” (we could alternatively put it under Article VI, which talks about permitted uses, but since it’s an exemption from regulation/jurisdiction rather than a specific permitted use, I put it under the general jurisdiction section).

- ☐ **Must** not exclude manufactured homes based on the age of the home. (G.S. 160D-910.)

The City’s regulations on manufactured housing (Sec. 620 “Performance, Design, and Locational Standards for Manufactured Housing” specifies that only homes constructed after July 1, 1976 are permitted. This standard relates to date manufactured homes began to be regulated by HUD standards, and regulations of this kind have been upheld by the courts. No changes proposed.

- ☐ **Must** follow standardized process for housing code enforcement to determine owner’s abandonment of intent to repair and need for demolition. (G.S. 160D-1203(6).)

A major overhaul is proposed to modernize the City’s enforcement and administration of the minimum housing code, including updating Sec. 10-34 to address abandonment of intent to repair.

- ☐ **May** adopt moratoria for development regulations (subject to limitation on residential uses); moratoria do not affect rights established by permit choice rule. (G.S. 160D-107.)

The power granted to local governments to adopt moratoria is outlined in the statutes, and we can follow that process as needed for specific moratoria – no ordinance changes are proposed.

- ☐ Municipalities **may** petition court to appoint a receiver for vacant structures. (160D-1130.)

No ordinance changes proposed at this time.

A. Historic Preservation

- ☐ **Must** follow standard quasi-judicial procedures for preservation certificates of appropriateness. (G.S. 160D-947(c).)

Section 1705.6 “Applications and Required Procedures” under Article XVII Historic Preservation has been amended to reference the standard quasi-judicial procedures established in Article XIII, Division 3 derived from G.S. 160D-406 (Note: G.S. 160D-947(c) referenced above refers back to G.S. 160D-406, which outlines quasi-judicial procedures for all boards and q.j. decisions.)

- ☐ **Must** frame preservation district provisions as “standards” rather than “guidelines.” (G.S. 160D-947(c).)

Section 1705.2 of the Historic Preservation ordinance is amended to establish standards rather than guidelines. The Historic Preservation Commission establishes these standards as a board, and they are not codified. The HPC has discussed making these changes and will take formal action in January to amend their “guidelines” to become “standards.”

- ☐ **May** choose for appeals of preservation commission decisions to go to board of adjustment. Default rule is that preservation appeals go directly to superior court rather than to board of adjustment. (G.S. 160D-947(e).)

The historic preservation ordinance, as adopted in 2019, established the City Council as the body to hear appeals, rather than having appeals go directly to superior court. Because the HPC is the same as the planning board, and members of the planning board also make up the members of the board of adjustment, the BOA is not an appropriate appeals body. Staff verified that this was acceptable with Adam Lovelady. No changes proposed.

B. Development Agreements

Note: The City’s current development regulations do not currently contain specific procedures for entering into a development agreement. The authority to enter into developer’s agreements, and the process and limitations, exists through the statute, so no code changes are proposed. This is most often relevant for public-private partnerships, annexation agreements, conditional zoning districts, and subdivisions that involve the dedication of infrastructure. The City should follow the procedures in 160D any time a development agreement is desirable and proposed alongside another type of land use application.

The only references to the City entering into an agreement with a developer are found in the subdivision ordinance in Sec. 19-16 (related to cost-share on greenway improvements) and Sec. 19-36 (related to reimbursements for water and sewer). This process has not been followed properly on previous subdivision approvals, and forthcoming changes to the subdivision ordinance will aim to clarify the requirements for both dedication of infrastructure as well as city participation in construction or cost-sharing.

- ☐ **Must** process a development agreement as a legislative decision. (G.S. 160D-105.)
- ☐ **Must** have a local government as a party to a development agreement (a water and sewer authority may enter an agreement as a party, but not independently). (G.S. 160D-1001(b).)

- **May** consider a development agreement concurrently with a rezoning, subdivision, or site plan; **may** consider a development agreement in conjunction with a conditional zoning that incorporates the development agreement. (G.S. 160D-1001(d).)
- **May** address fewer topics in development agreement content (list of mandated topics is shortened). (G.S. 160D-1006.)
- **May** mutually agree with a developer for the developer to provide public improvements beyond what could have been required, provided such conditions are included in the development agreement. (G.S. 160D-1006(d).)
- **May** include penalties for breach of a development agreement in the agreement or in the ordinance setting the procedures for development agreements; either party may bring legal action seeking an injunction to enforce a development agreement. (G.S. 160D-1008.)

VI. Comprehensive Plan [Chapter 4, Section I]

- **Must** adopt a comprehensive plan or land-use plan by July 1, 2022, to maintain zoning (no need to re-adopt a reasonably recent plan). (G.S. 160D-501(a).)

City's comprehensive plan was adopted in 2007, and since then other planning documents that fall into the broad definition of a "comprehensive" plan have supplemented and updated that document – Pedestrian Plan (2013), North Main Small Area Plan (2015), OVT Master Plan (2016), Fairfield South Redevelopment Concepts (2016-2017), Neighborhood Map project (2018), Comprehensive Architectural Survey (2018), Bicycle Plan (2018).

Planning staff will work on updating the framework of the comprehensive plan to include and reference the ongoing planning efforts, and the Planning Board will coordinate public input for the plan update in 2021-2022.

Ordinance amendments proposed under Sec. 2-205-208 incorporate the related statutory requirements for comprehensive plans.

- **Must** adopt a plan or a plan update following the procedures used for a legislative decision. (G.S. 160D-501(c).)

Sec. 2-207 is added to address adoption and amendment process.

- **Must** reasonably maintain a plan. (G.S. 160D-501(a).)

Sec. 2-205(2) is added to address reasonable maintenance and updates.

- **May** coordinate a comprehensive plan with other required plans, such as Coastal Area Management Act (CAMA) plans. (G.S. 160D-501(a).)

The City is not subject the CAMA regulations.

- **May** coordinate with other local governments, state agencies, or regional agencies on planning processes. (G.S. 160D-503(a).)
No code changes necessary – we coordinated with other agencies for the OVT master plan, and we participate in regional planning efforts for hazard mitigation, transportation planning (MPO) and regional bike and bed planning – those plans are often adopted by resolution by the city and other participating entities.

VII. Legislative Decisions [Chapter 4, Section II]

A. Notice

- **Must** follow applicable procedures for legislative decisions under any development regulation authorized under Chapter 160D, not just zoning; **must** adopt any development regulation by ordinance, not by resolution. (G.S. 160D-601.)

Amendments proposed to Sec. 1-9 “Amendments; new ordinances; amendatory language” to add section on development ordinances (Chapters 4 Building, 9 Flood, 10 Housing, and 19 Subdivision). Amendments to Appendix A (zoning ordinance) and the zoning map have more specific procedures contained in Article XIV, which are referenced in the changes proposed to Sec. 1-9. (To my knowledge, we don’t have any development regulations adopted by resolution.) I also deleted language in Sec.1-11 that incorrectly said the subdivision and zoning ordinances weren’t a part of the Code.

- For zoning map amendments, **must** provide notice not only to immediate neighbors but also to properties separated from the subject property by street, railroad, or other transportation corridor. (G.S. 160D-602.)

Updated noticing requirements in Sec. 1402.3 “Planning Board Review” and Sec. 1402.4 “Legislative Hearing by the City Council” to reference G.S. 160D-601 and 160D-602. Our noticing requirements are proposed to go one step farther than what the state requires, by expanding the definition of “abutting” properties to include those that abut sub-standard properties (a/k/a “spite strips”) in addition to other kinds of rights-of-way, as well as those that abut abutting properties held in common ownership with the subject parcel. These changes were recommended by the Planning Board.

- For zoning map amendments, **must** provide posted notice during the time period running from twenty-five days prior to the hearing until ten days prior to the hearing. (G.S. 160D-602(c).)

This is our current practice, updated references in Sec. 1402.4.

- For extension of ETJ, **may** use single mailed notice for ETJ and zoning-map amendment pursuant to statutory procedures. (G.S. 160D-202.)

If we ever were to extend the ETJ, we would follow statutory provisions. No ordinance amendments proposed.

- For zoning map amendments, **may** require applicant to notify neighbors and hold a community meeting and **may** require report on the neighborhood communication as part of the application materials. (G.S. 160D-602(e).)

We currently don't require this. Given that we have two public meetings (one at PB and one at Council), staff believes that we have adequate avenues for public comment built into the process. However, there are times where a community meeting would be extremely beneficial to work out initial ideas in a less formal setting. Since community meetings represent an additional burden on the applicant (possible to add time, cost, etc.) it is important to not be overly broad in requiring this.

Some language is proposed in Sec. 1402.21-22 that gives the Planning Director the authority to require a community meeting or additional correspondence with neighbors, and attempts to clearly outline that authority and specifically exempt certain types of amendments. A determination by the Planning Director that a community meeting is required would be appealable to the BOA for a final ruling, the same as any other administrative decision made by staff. (Most often, this would apply to conditional zoning requests and large amendments with the potential to have impacts beyond the immediately adjacent property owner.)

B. Planning Board Comment

- **Must** refer zoning amendments to the planning board for review and comment; **must** not have governing board handle planning board duty to review and comment on zoning amendments. (G.S. 160D-604(c), (e).)

Our current process complies; updates to Appendix A, Article XIV "Amendments" are proposed for clarity and consistency.

- **Must** have planning board consider any plan adopted according to G.S. 160D-501 when making a comment on plan consistency. (G.S. 160D-604(d).)

Amended Sec. 1402.3 "Planning Board Review" to be more specific, consistent with 160D, on what the Planning Board must consider in making their comments and recommendations. As a matter of practice, we were already doing this, but this will codify the requirement.

- **May** refer development regulation amendments (other than zoning) to the planning board for review and comment. (G.S. 160D-604(c).)

In the near future, updates to the subdivision ordinance will require that changes to the subdivision regulations also go to the planning board for review and comment. Other development regulations, including the building chapter, housing chapter, flood damage prevention ordinance, and stormwater ordinance, require legislative hearings before Council prior to amending, but changes to these ordinances are rare, and they regulate parts of the development process that the Planning Board is not involved with, so staff recommends requiring review only for zoning and subdivision (as a courtesy, changes to other ordinances may be sent to the Planning Board, and the Council may send any development ordinance to the planning board for a recommendation prior to adopting).

C. Plan Consistency

- ☐ When adopting an amendment to the zoning ordinance, **must** adopt a brief statement describing whether the action is consistent or inconsistent with approved plans. (G.S. 160D-605(a).) *(This eliminates the 2017 requirement that statements take one of three particular forms.)*

Sec. 1402.5 “Decision of the City Council” is amended to require consistency statements and reasonableness statements, which has been our standard practice in accordance with state statutes for years (it’s just never been in the code). Also deleted outdated sections on protest petitions.

- ☐ **May** adopt plan consistency statement when acting upon the zoning amendment or as a separate motion. (G.S. 160D-605(a).)

Proposed changes do not specify how the statement is to be adopted. Typically, we handle as a single motion, based on draft statements prepared by staff, but each case is different. We would always defer to statutes and Robert’s Rules of Order for the discussion, amendment, and adoption of consistency statements – no code changes are required in order to utilize the flexibility provided here.

- ☐ **May** meet the requirement for plan consistency even without formal adoption of a written statement if the minutes of the governing board meeting reflect that the board was fully aware of and considered the plan. (G.S. 160D-605(a).)

This is sort of a “CYA” provision for local governments, arising from case law. This should not be applicable to the City, since under our current and proposed process, staff is including draft statements in the packets of information sent to the board and Council for all cases.

- ☐ **May** concurrently consider a comprehensive plan amendment and a zoning amendment; must not require a separate application or fee for plan amendment. (G.S. 160D-605(a).)

Amendments are proposed to Chapter 2, Sec. 2-207 and Appendix A, Sec. 1402.6 that clarify that amending the comprehensive plan is a legislative process, and clarifying that the adoption of map amendments that are inconsistent with the plan automatically amend the plan. Since the plan is not a regulatory document, and has no actual authority on development, we’ve never established a formal process for an applicant to petition the City for an amendment to the plan. Essentially, a petition for a map amendment that’s inconsistent with the plan is “de facto” also a petition to amend the plan, and as such no additional application or fee is being required of applicants seeking these types of changes.

- ☐ **Must** note on the applicable future land use map when a zoning map amendment is approved that is not consistent with the map; the future land use map is deemed amended when an inconsistent rezoning is approved. (G.S. 160D-605(a).) *(This clarifies that a rezoning inconsistent with a plan does not amend the text of the plan, but it does amend the future land use map.)*

Sec. 2-208 (under Chapter 2) and Sec. 1402.6 (under Appendix A) is amended to reflect this.

- ☐ For a future land use map that is deemed amended, if it is a CAMA plan, then such amendment is not effective until it goes through the CAMA plan-amendment process. (G.S. 160D-501.)

CAMA stands for Coastal Area Management Act – not applicable to Lenoir.

- ☐ **Must** adopt a statement of reasonableness for zoning *map* amendments; for such statements, **may** consider factors noted in the statutes; **may** adopt a statement of reasonableness for zoning *text* amendments. (G.S. 160D-605(b).)

Proposed changes to Section 1402.5 “Decision of the City Council” codify this requirement for map amendments. No codified requirement for a statement of reasonableness is proposed for zoning text amendments; however, text amendments are usually presented to Council as ordinances with whereas clauses that lay out both the consistency and the reasonableness of the proposed changes.

- ☐ **May** consider and approve a statement of reasonableness and a plan consistency statement as a single, combined statement. (G.S. 160D-605(c).)

Sec. 1402.5 includes this permission (staff commonly combines the two in our draft statements that we prepare for the board).

D. Voting

- ☐ **Must** permit adoption of a legislative decision for development regulation on first reading by simple majority; no need for two-thirds majority on first reading, as was required for cities under prior law. (G.S. 160A-75; S.L. 2019-111, § 2.5(n).)

Deleted references to protest petitions in Sec. 1402.5 “Decision of the City Council,” Amended language in Sec. 1401 “Requirements For Change” requiring four of seven members to be more generic to just reference a majority vote (in case we have a vacant seat or only have 6 members voting, an amendment could technically pass with 3 votes).

E. Certain Legislative Decisions

- ☐ **Must** prohibit third-party down-zonings; **may** process down-zonings initiated by the local government or landowner (G.S. 160D-601; S.L. 2019-111, Pt. I.)

Updated language in Section 1402.1 “Initiation of Amendments” to prohibit third-party down-zonings and reference this statute.

- ☐ **Must** obtain applicant’s/landowner’s written consent to conditions related to a conditional zoning approval to ensure enforceability. (G.S. 160D-703(b); S.L. 2019-111, Pt. I.)

Amended Sec. 820.4 “Applicability of Conditions” to require a signature block for the applicant to consent to the conditions on the ordinance prior to recording.

- ☐ **May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional use district zoning. (G.S. 160D-102.)

We made this change several years ago. Several sections of code are proposed to be updated to reference new statutes, but our process will remain largely unaffected. (See Sec. 502, 820, and Article IX for changes relating to legislative conditional zoning and quasi-judicial special use permits.)

- With applicant's written consent, **may** agree to conditional zoning conditions that go beyond the basic zoning authority to address additional fees, design requirements, and other development considerations. (G.S. 160D-703(b); S.L. 2019-111, Pt. I.)

Added language from statute to Sec. 820.2 "Conditions on Use and Development" to clarify this point.

- **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define "minor modification: by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

Proposed amendments to Sec. 820.6 "Modification and Repeal" (Conditional Zoning) and Sec. 900.5 "Modification of Plans" (Special Use Permits) to outline a formalized process, with standards, for minor modifications and major modifications/repeal of these two types of approvals.

VIII. Quasi-Judicial Decisions [Chapter 4, Section III]

A. Procedures

- **Must** follow statutory procedures for all quasi-judicial development decisions, including variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. (G.S. 160D-102(28).)

New division 3 added under Article XIII "Administration" in the zoning ordinance, to establish a single quasi-judicial procedure consistent with G.S. 160D-406.

- **Must** hold an evidentiary hearing to gather competent, material, and substantial evidence to establish the facts of the case; the evidentiary hearing **must** have testimony under oath; **must** establish written findings of fact and conclusions of law. (G.S. 160D-406.)

New division added under Article XIII "Administration" in the zoning ordinance, to establish a single quasi-judicial procedure consistent with G.S. 160D-406.

- Board chair **must** rule at the evidentiary hearing on objections to inclusion or exclusion of administrative material; such ruling **may** be appealed to the full board. (G.S. 160D-406(d).)

New division added under Article XIII "Administration" in the zoning ordinance, to establish a single quasi-judicial procedure consistent with G.S. 160D-406.

- **Must** allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; **may** allow non-parties to present competent, material, and substantial evidence that is not repetitive. (G.S. 160D-406(d).)

New division added under Article XIII “Administration” in the zoning ordinance, to establish a single quasi-judicial procedure consistent with G.S. 160D-406.

- **May** continue an evidentiary hearing without additional notice if the time, date, and place of the continued hearing is announced at a duly noticed hearing that has been convened; if quorum is not present at a meeting, the evidentiary hearing is automatically continued to the next regular meeting of the board with no notice. (G.S. 160D-406(b).)

New division added under Article XIII “Administration” in the zoning ordinance, to establish a single quasi-judicial procedure consistent with G.S. 160D-406.

- **May** distribute meeting packet to board members in advance of the evidentiary hearing; if this is done, then **must** distribute the same materials to the applicant and landowner at the same time; **must** present such administrative materials at the hearing and make them part of the hearing record. (G.S. 160D-406(c).)

New division added under Article XIII “Administration” in the zoning ordinance, to establish a single quasi-judicial procedure consistent with G.S. 160D-406.

- **May** have the planning board serve as a preliminary forum for review in quasi-judicial decisions; if this is done, the planning board must not conduct a formal evidentiary hearing, but must conduct an informal preliminary discussion of the application; the forum and recommendation must not be used as the basis for the decision by the board—the decision must still be based on evidence presented at the evidentiary hearing. (G.S. 160D-301.)

The Planning Board is currently, and is proposed to remain, a part of the process for quasi-judicial special use permits (f/k/a conditional use permits). Their role as a “preliminary forum” is clarified under Chapter 2, Sec. 2-201 “Function” and greater detail on what this means and how the meetings will be noticed is provided in Sec. 900.3 “Application for Special Use; Planning Board Review”.

- **May** require recordation of special use permits with the register of deeds. (G.S. 160D-705(c).)

Proposed amendments to Sec. 900.4 “City Council Actions” add language about what is required on the actual permit document, including signature of the applicant consenting to conditions, and implements a requirement to record the permit with the ROD.

- △ **Be aware** that the definition of *close family relationship* as used for conflicts of interest includes spouse, parent, child, brother, sister, grandparent, or grandchild (including step, half, and in-law relationships). (G.S. 160D-109(f).)

This is proposed to be codified in the conflict of interest sections under Chapter 2.

- △ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts.

(S.L. 2019-111, § 1.9.)

Appointed board members and elected officials holding evidentiary hearings and making quasi-judicial decisions should be trained on this; and reminded during the hearing if necessary. No codification proposed.

B. Certain Quasi-Judicial Decisions

- ☐ **Must** not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. (G.S. 160D-705(c); S.L. 2019-111, Pt. I.)

As a matter of practice, staff recommends most conditions and provides input during hearings (along with City Attorney) to ensure that conditions are legal to impose. However, the restrictions on conditions are proposed to be codified in Sec. 900.4 “City Council Actions”

- ☐ **Must** obtain applicant’s/landowner’s written consent to conditions related to a special use permit to ensure enforceability. (G.S. 160D-1402(k); G.S. 160D-1403.2; S.L. 2019-111, Pt. I.)

Proposed amendments to Sec. 900.4 “City Council Actions” add language about what is required on the actual permit document, including signature of the applicant consenting to conditions, and implements a requirement to record the permit with the Register of Deeds.

- ☐ **Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; **must** presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)

Amendments to Sec. 1308 “Appeals” clarify the process consistent with statutes, including these time frames and presumption of notice.

- ☐ **May** adjust variance standards to provide for reasonable accommodation under the federal Fair Housing Act. (G.S. 160D-705(c).)

The variance standards in Section 1331 “Standards for Variance Approval; Findings of Fact” are proposed to be updated, as the current code version is several amendments behind the statutory requirements. Reasonable accommodation under the FHA is included under the standard for hardships related to the property, as this is one instance where the hardship would technically be related to the occupants of the property (this parallels the way this accommodation is laid out within the statutes).

- ☐ **May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional use district zoning. (G.S. 160D-102.)

We made this change several years ago. (See Sec. 502, 820, and Article IX for changes relating to legislative conditional zoning and quasi-judicial special use permits.)

- **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define “minor modification” by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

Updated language is proposed to Sec. 900.5 related to minor and major modifications to Special Use Permits, consistent with G.S. 160D

IX. Administrative Decisions [Chapter 4, Section IV]

A. Development Approvals

- **Must** provide development approvals in writing; **may** provide in print or electronic form; if electronic form is used, then it **must** be protected from further editing. (G.S. 160D-403(a).)

Updated Sec. 1301 “Zoning Permit Required” to be consistent with this statute.

- **Must** provide that applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property. (G.S. 160D-403(a).)

Updated Sec. 1301 “Zoning Permit Required” to be consistent with this statute.

- **Must** provide that development approvals run with the land. (G.S. 160D-104.)

This is an underlying principal of development regulation; but new section 510 “Development Approvals Run with the Land” is added to clarify this applies broadly to all types of development approvals.

- For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)

This has been incorporated into Sec. 1307.2 “Revocation of Permits” (for administrative approvals), as well as in Sec. 820.6(4) “Repeal” (for Conditional Zoning) and Sec. 900.7 “revocation of permit” for Special Use Permits (previous process was not adequate) to clarify that it must follow same process as approval. If this ever becomes a question on any type of development approval, we can always fall back on statutes for guidance on how to revoke a particular approval, if needed.

- **May** require community notice or informational meetings as part of the decision-making process for administrative development approvals (quasi-judicial and legislative decisions already had notice and hearing requirements). (G.S. 160D-403(h).)

No code changes proposed. From time-to-time, planning staff will recommend community meetings, or conduct our own outreach as we deem appropriate. This seems to offer support for this, but right now staff sees no need to codify any authority or requirement under this statute.

- **May** set expiration of development approvals if work is not substantially commenced; default rule is twelve months, unless altered by state or local rule. (G.S. 160D-403(c).) Building permits expire after six months, as under prior law (no change to building permits). (G.S. 160D-1111.)

We've historically set zoning permits to expire after 6 months, which may have been an error on my part, although we've never denied an extension or denied a re-application for a new permit for the same development. We are now setting 12-month expiration dates. Amendments proposed to 1301 "Zoning Permit required" to set a 12-month standard expiration for permits. (Note: Under Sec. 1500, Site-Specific Vesting Plans, some zoning permits may actually require longer time-frames, and the language proposed is broad enough to allow for specific development approvals to have longer time limits.)

- **May** extend expiration for development approvals for which construction is commenced and then is discontinued; default rule is that such approvals are valid for 24 months after discontinuation. (G.S. 160D-108(d.) Building permits for which work has been discontinued expire after twelve months, as under prior law (no change to building permits). (G.S. 160D-1111.)

Sec. 1505 "Substantially Commencing Development" is proposed to address both what commencing development means as well as what happens when development has been commenced, but is later discontinued, consistent with these statutory requirements.

- **May** authorize administrative staff to approve minor modifications of development approvals and conditional-zoning approvals; if this is done, then **must** define "minor modifications" by ordinance and **must** not include modification of permitted use or density of development; major modifications **must** go through full applicable approval process. (G.S. 160D-403(d); -703(b); -705(c).)

Sec.820.6 (1) "Minor Modifications" is added to clearly define staff's authority to make minor changes to concept plans/layout – and major modifications are also clearly defined in this Section.

B. Determinations

- **Must** provide written notice of determination by personal delivery, electronic mail, or first-class mail to the property owner and party seeking determination, if different from the owner. (G.S. 160D-403(b).)

Sec. 1300.1 "Determinations and Interpretation; Notice" is proposed to be added to the Administration section of the Zoning ordinance to address this.

- **May** designate an official to make determinations for a particular development regulation. (G.S. 160D-403(b).)

Sec. 1300.1 clarifies that the Planning Director can authorize any staff member of the department to make determinations, but that any disagreements on staff interpretations go to the Director for a final written determination (that could, in turn, be appealed to the BOA).

- **May** require owner to post notice of determination on the site for ten days; if such is not required, then owner has option to post on the site to establish constructive notice. (G.S. 160D-403(b).)

No requirement on owner for posting is proposed; Sec. 1300.1 clearly states it is the landowners responsibility to post notice if they want/need to. (Note: This relates to the idea of starting an appeals clock ticking to avoid challenges down the road – if an owner receives a decision and posts notice of it,

neighbors can't come back later on and appeal when they find out about it unless the owner never posted anything.)

C. Appeals of Administrative Decisions

- ☐ **Must** allow administrative decisions of any development regulations (not just zoning) to be appealed to the board of adjustment, unless provided otherwise by statute or ordinance. (Appeals relating to erosion and sedimentation control, stormwater control, or building code and housing code violations are not made to the board of adjustment unless specified by local ordinance.) (G.S. 160D-405.)

Chapter 4 Building – Appeals currently go to City Council, proposed to amend Sec. 4-198 to go to the BOA

Chapter 9 Flood Damage Prevention – Proposed to change the Appeals Board to the BOA for both appeals on enforcement and variances. Currently no specific process for appealing other administrative decisions made under the ordinance, proposed to amend language in Sec. 9-45 “Designation of a Floodplain Administrator” which talks about the Lenoir Planning Director to reference appeals of any administrative decision following the same process as administrative decisions in the zoning ordinance.

Chapter 10 Housing – the BOA is currently the appeals board (no changes proposed)

Chapter 19 Subdivision – Currently, the subdivision ordinance calls for appeals of administrative approvals (minor subdivisions; determinations on exemptions) to go to the Council. Upcoming changes to the subdivision ordinance will change the appeal board to the BOA, which staff believes is more appropriate than the Council.

Appendix C Stormwater – Appeals of administrative decisions of the SW administrator go to the Lenoir Board of Adjustment (no changes proposed)

- ☐ **Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)

Amendments to Sec. 1308 “Appeals” clarify the process consistent with statutes, including these time frames and presumption of notice. Amendments to Sec. 4-198 to grant a 30-day time frame for appeals of an order of the building inspector.

- ☐ **Must** require the official who made the decision (or his or her successor if the official is no longer employed) to appear as a witness in the appeal. (G.S. 160D-406.)

Amendments to Sec. 1308 “Appeals” clarify the process consistent with statutes, including the appearance of new officials.

- ☐ **Must** pause enforcement actions, including fines, during the appeal. (G.S. 160D-405.)

Amendments to Sec. 1308 “Appeals” clarify the process consistent with statutes, including stays of enforcement.

- **May** assign the duty of hearing appeals to another board (other than the board of adjustment); if this is done, such board must follow quasi-judicial procedures. (G.S. 160D-405.)

N/A – the Board of Adjustment is the appeals board for administrative decisions.

- **May** designate that appeals be filed with the local government clerk or another official. (G.S. 160D-405.)

Proposed language in Sec. 1308 would require that appeals be filed with the Planning Department. TJ question: is this sufficient or does it have to be an “official” like the Planning Director?

X. Vested Rights and Permit Choice [Chapter 5, Section I]

[Note: This is one of the topics that the SOG provided some sample ordinances to help communities draft ordinances consistent with the statutes. I used their draft language to prepare the amendments related to these statutes.]

A. Vested Rights

- ☐ **Must** recognize that building permits are valid for six months, as under prior law. (G.S. 160D-1111) Sec. 4-110 of Chapter 4, “Building and Building Regulations” specifies that permits are good for 6 months; no changes proposed. (Note: this Chapter is delegated to Caldwell County Building Inspections.)
- ☐ **Must** recognize the default rule that development approvals/permits are valid for twelve months, unless altered by statute or extended by local rule (G.S. 160D-108(d)).

Amendments proposed to 1301 “Zoning Permit required” to set a 12-month standard expiration for permits.

- ☐ **Must** identify site-specific vesting plans (formerly site-specific development plans) with vesting for two to five years, as under prior law, except for specified exceptions. (G.S. 160D-108.1)

Previous Sec. 1500 relating to vested rights and site-specific development plans in Article XV of the zoning ordinance is repealed and replaced with sample ordinance from SOG (proposed to be codified as Secs. 1500-1506.

- ☐ **Must** recognize multi-phase developments—long-term projects of at least 25 acres—with vesting up to seven years, except for specified exceptions (160D-108(c); -108(f).) (The previously authorized phased-development plan is obsolete and should be deleted from ordinance.)

The sample ordinance provided by the SOG for vesting does not recognize multi-phase developments (this section of Chapter 160D is one that was further amended since the original adoption of the chapter). Language on multi-phase developments was inserted as new Sec. 1503. (New sections 1502 and 1504 are both taken directly from the SOG draft ordinance.)

- **May** provide for administrative determination of vested rights and for appeal to the board of adjustment. (G.S. 160D-108(h), -405.)

Proposed ordinance language does not specifically provide for this; however, determinations on application completeness are being made by staff and would be appealable to the BOA under the general provisions for the appeal of any determination made by planning staff. Since it's permissive, not required, no changes are proposed specific to this subsection of 160D.

- △ **Be aware** that a person claiming vested rights may bring an original civil action in court, skipping administrative determination and board of adjustment consideration. (G.S. 160D-108(h); 160D-405(c).)
- △ **Be aware** that vested rights run with the land, except for state-permitted outdoor advertising permits that run with the owner of the permit. (G.S. 160D-108(i); S.L. 2019-111, Pt. I.)

B. Permit Choice

- **Must** not make an applicant wait for final action on the proposed change before proceeding if the applicant elected determination under prior rules. (G.S. 143-755; G.S. 160D-108(b).)

Basic provisions of permit choice are proposed to be codified as Sec. 1505, under Article XV of the zoning ordinance, pursuant to G.S. 143-755 (which spells out permit choice for all kinds of applications, not just local development permits) and G.S. 160D-108(b) (which refers back to 143-755).

- △ **Be aware** that if a local development regulation changes after an application is submitted, the applicant may choose the version of the rule that applies; but **may** require the applicant to comply with new rules if the applicant delays the application for six months. (G.S. 143-755; G.S. 160D-108(b); S.L. 2019-111, Pt. I.)

This permission is proposed to be codified in Sec. 1506(c), under the permit choice rules.

- △ **Be aware** that an application for one development permit triggers permit choice for permits under any development regulation; such permit choice is valid for eighteen months after approval of the initial application. (G.S. 143-755; G.S. 160D-108(b); S.L. 2019-111, Pt. I.)

This has been a topic of discussion among planners and the SOG, and is largely viewed as having some problematic and unintended consequences. Staff is aware that this provision exists; and will attempt to navigate the various vesting periods trigger by various permits, in consultation with the City Attorney, as individual cases arise. Case law or future amendments will likely help clarify how to enforce this. At this time, no code changes are proposed to address this, as the right exists in the statute already and doesn't need to be codified to be in effect.

XI. Judicial Review [Chapter 5., Section II]

A. Declaratory Judgments

- △ **Be aware** that an individual may bring a declaratory judgment action to challenge legislative zoning decisions, vested rights claims, and challenges to land use authority related to administrative decisions, subject to specified procedures. (G.S. 160D-1401; G.S. 160D-1403.1)
- △ **Be aware** that other civil actions may be authorized—G.S. Chapter 160D does not limit availability of other actions. (G.S. 160D-1404.)

B. Appeals of Quasi-Judicial Decisions

- **Must** update ordinance to address appeals of certificates of appropriateness for historic landmarks and historic districts; default rule is that such appeals go straight to court; local government may opt for such appeals to go to the board of adjustment, as under prior statutes. (G.S. 160D-947.)

Our existing ordinance assigns the City Council as the body to address appeals of certificates of appropriateness; which is also permissible (confirmed via Adam Lovelady with the SOG)

- **Must** provide that appeals of certificates of appropriateness must be filed within thirty days after the decision is effective or written notice is provided, the same as for appeals of other quasi-judicial decisions. (G.S. 160D-947; -1405.)

Amendments proposed to Sec. 1705.6(J) to reflect the process outlined in 160D-947; -1405).

- △ **Be aware** that on appeal a party may request a stay of the approval or enforcement action. (G.S. 160D-1402(e).)
- △ **Be aware** that a local government may seek a stay in favor of itself (to prevent development under an approval). (G.S. 160D-1402(e).)
- △ **Be aware** that if, in the absence of a stay, an applicant proceeds with development, the person does so at his or her own risk. (G.S. 160D-1402(f).)
- △ **Be aware** that on appeal, the superior court now must allow for supplementing the record on questions of standing, conflicts of interest, constitutional violations, or actions in excess of statutory authority. (G.S. 160D-1402; S.L. 2019-111, § 1.9.)
- △ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. (G.S. 160D-1402; S.L. 2019-111, § 1.9.)

NOTE: This should be a topic of periodic/on-going training for new members and re-appointments for any board tasked with holding evidentiary hearings. During hearings, staff and/or the City Attorney can also remind board members of this limitation.

- △ **Be aware** of specific judicial instructions for decisions of appeals of quasi-judicial decisions. (G.S. 160D-1402(k); S.L. 2019-111, § 1.9.)

NOTE: This section allows courts to remand with instructions for local governments, when the court concludes that the decision was not supported by competent, materials and substantial evidence in the record, or is based upon an error of law. For wrongfully issued permits, the court can remand with instructions to revoke the permit, and for wrongfully denied permits, the court can remand with instructions to issue the permit.

C. Subdivision Decisions

Note: A major overhaul to the subdivision ordinance (Chapter 19) is currently being drafted, and we will re-visit this checklist.

- **May** establish a rule that administrative subdivision decisions are appealed to the board of adjustment. (G.S. 160D-1405.)
- △ **Be aware** that appeals of administrative subdivision decisions may be appealed directly to superior court. (G.S. 160D-1403.)
- △ **Be aware** that quasi-judicial subdivision decisions are appealed to superior court in the nature of certiorari. (G.S. 160D-1402.)

D. Attorneys' Fees

- △ **Be aware** that a court *shall* award attorneys' fees if the court finds that a city or county violated a statute or case law setting forth unambiguous limits on its authority. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)
- △ **Be aware** that a court *shall* award attorneys' fees if the court finds that a local government took action inconsistent with, or in violation of, the permit choice ~~and vested rights~~ statutes. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)
- △ **Be aware** that a court *may* award attorneys' fees in other matters of local government litigation. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)

E. Additional Judicial Rules

- △ **Be aware** that a court may join a civil action challenging an ordinance with an appeal in the nature of certiorari. (G.S. 160D-1402(m).)
- △ **Be aware** that a local government **must** not assert the defense of estoppel to enforce conditions to which an applicant did not consent in writing. (G.S. 160D-1403.2; S.L. 2020-25; S.L. 2019-111, Pt. I.)
- △ **Be aware** that an action is not rendered moot if the party loses the relevant property interest as a result of the local government action being appealed, subject to applicable case law limits. (G.S. 160D-1402(j1); S.L. 2019-111, Pt. I.)

**AN ORDINANCE OF THE CITY COUNCIL OF LENOIR,
NORTH CAROLINA, AMENDING CHAPTERS 1, 2, 4, 9, 10,
AND APPENDIX A OF THE LENOIR CITY CODE
RELATED TO COMPLIANCE WITH NORTH CAROLINA
GENERAL STATUTES CHAPTER 160D, PROVIDING FOR
SEVERABILITY, CODIFICATION, AND AN EFFECTIVE
DATE.**

Whereas, the NC General Statutes that give local governments authority to regulate land use and development, previously located in N.C.G.S. Chapter 160A, Article 19, have been updated and re-codified as N.C.G.S. Chapter 160D, prompting the need for the City of Lenoir to update our local ordinances both to comply with legislative changes as well as to reference the new section citations; and

Whereas, the Lenoir Planning Board finds and declares that this ordinance and these amendments are consistent with the City's adopted Comprehensive Plan, which calls for straight-forward regulation and is inherently linked to much of our local authority to regulate zoning, which will be preserved and enhanced with these proposed amendments; and

Whereas, the Lenoir City Council hereby finds and declares that this ordinance and these amendments are reasonable and in the best interest of the public health, safety, and welfare, since they will ensure the City remains compliant with State law and eliminate potential conflicts or confusion resulting from outdated or unlawful provisions in our local ordinances that are enacted pursuant to authorities granted under the newly codified G.S. Chapter 160D; and

**NOW, THEREFORE, LET IT BE ENACTED BY THE CITY COUNCIL OF THE
CITY OF LENOIR, NORTH CAROLINA, AS FOLLOWS:**

SECTION 1. State Law references to Chapter 160A, Article 19 deemed updated:

State law references codified in ordinance provisions adopted pursuant to authority granted under G.S. 160A, Article 19, which stand in full force and effect under the newly adopted land use statutes G.S. 160D, are hereby considered amended in regards to the state law reference.

The Clerk shall be authorized to update state law references found within the Code of Ordinances based on the chart provided by the UNC School of Government entitled “Location of Chapter 160D Provisions in prior statutes” and attached hereto for reference.

SECTION 2. References to Conditional Use Permits deemed updated:

- (1) The terms “Conditional Use” and “Conditional Use Permit” are hereby amended to read “Special Use” and “Special Use Permit”
- (2) Appendix A, Article VI. – Permitted Use Chart is hereby amended as follows:
 - a. Sec. 600 Table A: “Chart of Permitted and Conditional Residential Uses” is amended to be the “Chart of Permitted and Special Residential Uses” and where ever the words “Conditional Use” appear, or the letter “C” is used on the chart, the Clerk is authorized to make such changes so that the words “Special Use” or the letters “SU” are substituted in accordance with G.S. 160D-703
 - b. Footnotes (Sec. 600, Table A) – the word “Conditional” is amended to read “Special” in Footnote A4
 - c. Sec. 600 Table B: “Chart of Permitted and Conditional Non-Residential Uses” is amended to be the “Chart of Permitted and Special Non-Residential Uses” and where ever the words “Conditional Use” appear, or the letter “C” is used on the chart, the Clerk is authorized to make such changes so that the words “Special Use” or the letters “SU” are substituted in accordance with G.S. 160D-703
 - d. Sec. 600 Table B: “Eating & Driving (with drive-through)” [sic] is amended to read “Eating and Drinking (with drive-through)”
 - e. Footnotes (Sec. 600, Table B) – the word “Conditional” is amended to read “Special” in Footnote B4

SECTION 3. Chapter 1 of the Code of Ordinances, City of Lenoir, North Carolina, “General Provisions” is hereby amended to read as follows:

Sec. 1-9. - Amendments; new ordinances; amendatory language.

- (a) All ordinances passed subsequent to this Code of Ordinances which amend, repeal or in any way affect this Code, may be numbered in accordance with the numbering system of this Code and printed for inclusion in this Code. In the case of chapters, sections and subsections or any part thereof repealed by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby. The subsequent

ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of subsequent ordinances until a time that this Code of Ordinances and subsequent ordinances numbered or omitted are readopted as a new Code of Ordinances by the council.

(b) Amendments to any of the provisions of this Code may be made by amending these provisions by specific reference to the section number of this Code in the following language: "That section _____ of the Code of Ordinances, City of Lenoir, North Carolina, is hereby amended to read as follows: ..." The new provisions shall then be set out in full as desired.

(c) If a new section not heretofore existing in the Code is to be added, the following language may be used: "That the Code of Ordinances, City of Lenoir, North Carolina, is hereby amended by adding a section to be numbered _____, which section reads as follows: ..." The new provisions shall then be set out in full as desired.

~~(e)~~(d) Prior to adopting, amending, or repealing any ordinance or development regulation authorized under G.S. 160D, including Chapters 4, 9, 10, and 19 of this Code, the City Council must hold a legislative hearing with proper notice pursuant to G.S. 160D-601. Amendments to Appendix A, including amendments to the Official Zoning Map, must follow the process outlined in that Chapter.

Sec. 1-11. - Ordinances not affected by Code.

(a) Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:

(1) Any ordinance promising or guaranteeing the payment of money of the city, or authorizing the issuance of any bonds of the city, or any evidence of the city's indebtedness.

(2) Any ordinance providing for public improvements and assessments therefor.

~~(3) Any zoning ordinance or any ordinance regulating or otherwise relating to the subdivision of land.~~

~~(4)~~(3) Any appropriation ordinance or ordinance providing for an annual budget or for the transfer of funds.

~~(5)~~(4) Any ordinance annexing territory to the city or discontinuing territory as a part of the city.

~~(6)~~(5) Any ordinance granting any franchise, permit or other right.

~~(7)~~(6) Any ordinance approving, authorizing or otherwise relating to any contract or agreement.

(b) All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

SECTION 4. Chapter 2 of the Code of Ordinances, City of Lenoir, North Carolina, “Administration” is hereby amended to read as follows:

ARTICLE II. - CITY COUNCIL

DIVISION 1. - GENERALLY

Sec. 2-27. – Conflicts of Interest, Legislative Functions.

A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to NCGS Chapter 160D where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

Sec. 2-28. Conflicts of Interest, Quasi-Judicial Functions

A member of any board exercising quasi-judicial functions pursuant to NCGS Chapter 160D shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons’ constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

Sec. 2-29. – Resolution of Objection

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

Sec. 2-30. – Familial Relationship

For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. State Law reference— Similar provisions, G.S. 160D-109.

Secs. 2-2731—2-40. - Reserved.

ARTICLE V. - BOARDS, COMMISSIONS AND DEPARTMENTS

DIVISION 1. - GENERALLY

Sec. 2-181. – Oath of Office

All members appointed to boards under G.S. Chapter 160D, Article 3 shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160A-61.

Sec. 2-182. – Conflict of Interest for Appointed Boards

- (a) *Advisory and Legislative Decisions.* Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to NCGS Chapter 160D where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
- (b) *Quasi-Judicial Decisions.* A member of any board exercising quasi-judicial functions pursuant to NCGS Chapter 160D shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

Sec. 2-183. – Conflicts of Interest for Staff.

- (A) *Administrative Decisions.* No staff member shall make a final decision on an administrative decision required by the City's development regulations if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.
- (B) *Financial Interest and Outside Employment.* No staff member administering development regulations shall be financially interested or employed by a business that is financially interested in a development subject to regulation under the City's Code of Ordinances unless the staff member is the owner of the land or building involved. No staff member or

other individual or an employee of a company contracting with a city local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City, as determined by the City Manager.

Sec. 2-184. – Resolution of Objection

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

Sec. 2-185. – Familial Relationship

For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. State Law reference— Similar provisions, G.S. 160D-109 and G.S. 160D-309.

Sec. 2-186. – Rules of Procedure; Minutes required

(a) Rules of procedure that are consistent with the provisions of G.S. 160D, Article 3 may be adopted by the governing board for any or all boards created pursuant to the same. In the absence of action by the governing board, each board created under G.S. 160D, Article 3 is authorized to adopt its own rules of procedure that are consistent with the provisions of this ordinance and G.S. 160D. A copy of any adopted rules of procedure shall be maintained by the City Clerk, and posted to the City’s website.

(b) Each board shall keep minutes of its proceedings.

State Law reference – Similar provisions, G.S. 160D-308.

Secs. 2-181~~186~~—2-195. - Reserved.

DIVISION 2. - PLANNING BOARD

Sec. 2-196. - Established.

There is hereby established a planning board for the city, which board shall consist of ten members appointed by the council. Municipal and extraterritorial jurisdiction membership shall be appointed in accordance with G.S. ~~160A-362~~160D-307, as amended. All members shall have

equal rights, privileges, and duties regardless of whether the matters at issue arise within the city or within the extraterritorial jurisdiction."

Sec. 2-201. - Function.

The planning board shall advise the City Council on matters related to comprehensive planning, community development, and development regulations. ~~make comprehensive surveys and studies of existing conditions and probable future developments and prepare such plans for physical, social and economic growth as will best promote the public health, safety, morals, convenience or the general welfare as well as efficiency and economy in the development of the city. In general, the planning board shall:~~ The planning board is assigned the following powers and duties:

- (1) To prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.
- (2) To facilitate and coordinate citizen engagement and participation in the planning process.
- (3) To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
- (4) To advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.
- (5) To exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct.
- (6) To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.

(7) To perform any other related duties that the governing board may direct.

- ~~(1) Acquire and maintain in current form such basic information, and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions.~~
- ~~(2) Prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical development of the area.~~
- ~~(3) Establish principles and policies for guiding action in the development of the area.~~
- ~~(4) Prepare and recommend to the city council ordinances promoting orderly development in accordance with the comprehensive plan.~~
- ~~(5) Determine whether specific proposed developments conform to the principles and requirements of the comprehensive plan for the growth and improvement of the area.~~
- ~~(6) Keep the council and the general public informed and advised as to these matters.~~

State Law reference— Similar provisions, G.S. 160D-301.

Sec. 2-205. - Comprehensive plan – Generally.

- (1) The comprehensive plan shall set forth goals, policies, and programs intended to guide the present and future physical, social, and economic development of the City, and shall include a future land use map. The comprehensive plan and future land use map is intended to guide coordinated, efficient, and orderly development within the planning and development regulation jurisdiction based on an analysis of present and future needs.
- (2) Once adopted, the comprehensive plan shall be reasonably maintained and updated.
- (3) Planning analysis may address inventories of existing conditions and assess future trends regarding demographics and economic, environmental, and cultural factors. The planning process shall include opportunities for citizen engagement in plan preparation and adoption, especially citizens who have been historically disenfranchised from the planning process.
- (4) The city may prepare and adopt other such plans as deemed appropriate. This may include, but is not limited to, small area plans, neighborhood plans, hazard mitigation plans, transportation plans, housing plans, and recreation and open space plans.

~~(a) The comprehensive plan, with the accompanying maps, plats, charts, and descriptive matter, shall be and show the planning board's recommendations to the council for the development of the planning area. Such plan shall include, among other things, the general location, character and extent of streets, bridges, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds and open spaces, the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes; the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any of the foregoing ways, buildings, grounds, open spaces, property, utilities, or terminals; the most desirable pattern of land use within the area, including areas for residential uses, for farming and forestry, for manufacturing and industrial uses, for commercial uses, for recreational uses, for open spaces, for mixed uses and for other features.~~

~~(b) The plan and any ordinances or other measures to effectuate it shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the city and its environs which will, in accordance with present and future needs, best promote health, safety, morals and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of healthful and convenient distribution of population, the promotion of good civic design and arrangements, wise and efficient expenditure of public funds, and the adequate provision of public utilities, services and other public requirements.~~

~~(c) The planning board may conduct such public hearings as may be required to gather information necessary for the drafting, establishment, and maintenance of the comprehensive plan. Before adopting any such plan it shall hold at least one public hearing thereon.~~

State Law reference— Similar provisions, G.S. ~~160A-364~~160D-501.

Sec. 2-206. –Comprehensive Plan Contents

The comprehensive plan may, among other topics, address any of the following:

- (1) Issues and opportunities facing the local government, including consideration of trends, values expressed by citizens, community vision, and guiding principles for growth and development.
- (2) The pattern of desired growth and development and civic design, including the location, distribution, and characteristics of future land uses, urban form, utilities, and transportation networks.
- (3) Employment opportunities, economic development, and community development.
- (4) Acceptable levels of public services and infrastructure to support development, including water, waste disposal, utilities, emergency services, transportation, education, recreation, community facilities, and other public services, including plans and policies for provision of and financing for public infrastructure.
- (5) Housing with a range of types and affordability to accommodate persons and households of all types and income levels.
- (6) Recreation and open spaces.
- (7) Mitigation of natural hazards such as flooding, winds, wildfires, and unstable lands.
- (8) Protection of the environment and natural resources, including agricultural resources, mineral resources, and water and air quality.
- (9) Protection of significant architectural, scenic, cultural, historical, or archaeological resources.
- (+)(10) Analysis and evaluation of implementation measures, including regulations, public investments, and educational programs.

State Law reference— Similar provisions, G.S. 160D-501(b).

Sec. 2-207. – Comprehensive Plan Adoption and Amendments

The comprehensive plan shall be adopted by the governing board with the advice and consultation of the planning board. Adoption and amendment of a comprehensive plan is a legislative decision and shall follow the process mandated for zoning text amendments set by G.S. 160D-601. If a plan is deemed amended by G.S. 160D-605 by virtue of adoption of a zoning amendment that is inconsistent with the plan, that amendment shall be noted in the plan.

State Law reference— Similar provisions, G.S. 160D-501(c).

Sec. 2-208. – Effect of Plans

Plans adopted under this Article shall be advisory in nature without independent regulatory effect. Plans adopted under this Article do not expand, diminish, or alter the scope of authority for development regulations adopted under G.S. 160D. Plans adopted under this Article shall be considered by the planning board and governing board when considering proposed amendments to zoning regulations as required by G.S. 160D-604 and G.S. 160D-605.

State Law reference— Similar provisions, G.S. 160D-501(c).

~~Secs. 2-206~~209—2-215. - Reserved.

DIVISION 3. - PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

Sec. 2-218. - ~~Zoning~~Ordinance enforcement.

The department of planning and community development or representative thereof shall be responsible for the enforcement of the zoning ordinance, subdivision ordinance, flood damage prevention ordinance, minimum housing ordinance, stormwater ordinance, and other development regulation ordinances as directed by the City Manager. No permit for alteration, repair or construction of any building, nor any approval for site work, parking areas, or other development activity regulated by the city shall be issued unless the plans and specifications show that the ~~building and its proposed use~~proposed development will be in compliance with the applicable provisions of the ~~zoning ordinance~~city's adopted development regulations.

~~State Law reference— Building inspections and inspectors, G.S. 160A-411 et seq., 153A-360 et seq., 160A-420, 160A-423.~~

Secs. 2-219—2-230. - Reserved.

Secs. 2-257-270. – Reserved.

DIVISION 5. – BOARD OF ADJUSTMENT

2-271 Establishment of a Board of Adjustment - A Board of Adjustment is hereby established. Said Board shall consist of six (6) regular members and two (2) alternate members. Five (5) regular members shall be citizens of the City of Lenoir, appointed by the Mayor, and approved by the City Council. One regular member shall be a citizen of the City of Lenoir's extra-territorial planning jurisdiction (ETJ), nominated by the Mayor and City Council, and approved by the Caldwell County Board of Commissioners. Two alternate members shall be members of the City of Lenoir or its ETJ, and approved by the appropriate body of government. Regular and alternate members shall be appointed for 3-year terms; however, the governing board may appoint certain members for less than three years so that the terms of all members shall not expire at the same time. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.

2-272 Proceedings of the Board of Adjustment - The Board of Adjustment shall adopt rules of procedure in accordance with the provisions of this ordinance and of Chapter 160D of the General Statutes of North Carolina.

2-273 Public Meetings - All meetings of the board shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings, showing the voice of each member upon each question, or if absent or failing to vote, indication of such fact; and shall keep records of its examinations and other official actions; all of which shall be immediately filed in the office of the Planning Department and shall be a public record.

2-274 Powers and Duties of the Board of Adjustment - The Board of Adjustment makes quasi-judicial decisions in accordance with the procedures in G.S. 160D-406 on the following types of cases:

- (1) Appeals of Administrative Decisions. Appeals of administrative decisions made by staff in the administration of the City's development ordinances adopted

pursuant to G.S.160D (building, housing, flood damage prevention, subdivision, zoning, and stormwater ordinances).

(2) Variances. Vary provisions of development ordinances that create unnecessary hardships, in accordance with provisions of this ordinance and G.S. 160D-705(d)

(3) Other appeals as authorized under G.S. 160D and the City's code of ordinances

2-275 Decision of the Board of Adjustment - The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. No more than six (6) members and/or alternate members shall vote on any matter. All regular members of the Board of Adjustment present shall vote and such alternate members as are needed to make up a six (6) member Board. Any additional alternate members present may participate in the discussion but shall not vote on the matter. On all matters brought before the Board of Adjustment, the Board shall inform the applicant in writing of its decision.

SECTION 5. Chapter 4 of the Code of Ordinances, City of Lenoir, North Carolina, "Building and Building Regulations" is hereby amended to read as follows:

ARTICLE I. - IN GENERAL

Sec. 4-2. - Fire limits.

The fire limits of the city shall be as described in Chapter 8 Fire Prevention and Protection, Article I, section 8-4 Fire limits.

State Law reference— Authority to establish fire limits, G.S. ~~160A-435~~160D-1128.

Sec. 4-76. - Powers of inspectors.

(a) *Authority.* Inspectors are hereby authorized, empowered, and directed to enforce all the provisions of this chapter.

- (b) *Right-of-entry*. Inspectors shall have the right-of-entry on any premises within the jurisdiction of the regulatory codes herein adopted at reasonable hours for the purpose of inspection or enforcement of the requirements of this chapter, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.
- (c) *Stop orders*. Whenever any building or part thereof is being demolished, constructed, reconstructed, altered or repaired in a hazardous manner, or in violation of any provision of this chapter or any other city ordinance, or in violation of any provision of any regulatory code herein adopted, or in violation of the terms of the permit issued therefor, or in such manner as to endanger life or property, the appropriate inspector may order such work to be stopped immediately. Such order shall be in writing to the owner of the property or his agent or to the person doing the work and shall state the reasons therefor and the conditions under which the work may be resumed.

Sec. 4-196. - Action in event of failure to take corrective measures.

- (a) If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. ~~160A-426~~160D-1119 shall fail to take prompt corrective measures, the inspector shall give him written notice, by certified or registered mail to his last known address or by personal service, that the building or structure is in a condition that appears to meet one or more of the following conditions:
- (1) Constitutes a fire and safety hazard;
 - (2) Is dangerous to life, health, or other property;
 - (3) Is likely to cause or contribute to blight, disease, vagrancy or danger to children;
 - or
 - (4) Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.
- (b) A hearing will be held before the inspector at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter.

- (c) Following the hearing, the inspector may issue such order to repair, close, vacation or demolish the building or structure as appears appropriate. If the name or whereabouts of the owner cannot, after due diligence, be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least ten days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the city at least once, not later than one week prior to the hearing.

Sec. 4-197. - Order to take corrective action.

If, upon a hearing held pursuant to the notice prescribed in G.S. ~~160A-428~~160D-1121, the inspector shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health or other property, he shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating or demolishing the building or structure or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe; provided, however, that where the inspector finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

Sec. 4-198. - Appeal; finality of order if not appealed.

Any owner who has received an order under G.S. ~~160A-429~~160D-1122 may appeal from the order to the ~~city council~~board of adjustment by giving notice of appeal in writing to the inspector and to the city clerk within ~~ten~~30 days following ~~issuance~~receipt of the written order. In the absence of an appeal, the order of the inspector shall be final. The ~~city council~~board of adjustment shall hear and render a decision in an appeal within a reasonable time. The council may affirm, modify and affirm, or revoke the order.

Sec. 4-199. - Failure to comply with order.

If the owner of a building or structure fails to comply with an order issued pursuant to G.S. ~~160A-429~~160D-1122 from which no appeal has been taken, or fails to comply with an order of the city council following an appeal, he shall be guilty of a Class 1 misdemeanor.

Sec. 4-200. - Civil and equitable enforcement.

- (a) Whenever any violation is denominated a misdemeanor under the provisions of this article, the city, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.
- (b) In the case of a nonresidential building or structure declared unsafe under G.S. ~~460A-426(b)~~160D-1119(b), the city may, in lieu of taking action under subsection (a) of this section, cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments. If the building or structure is removed or demolished by the city, the city shall sell the usable materials of the building and any person's property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of the superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.
- (c) Nothing in this section shall be construed to impair or limit the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

SECTION 6. Chapter 9 of the Code of Ordinances, City of Lenoir, North Carolina, “Flood Damage Prevention” is hereby amended to read as follows:

Sec. 9-1. - Statutory authorization, findings of fact, purpose and objectives.

This Flood Damage Prevention ordinance is adopted pursuant to the authority granted to local governments by the State of North Carolina to regulate development in flood prone areas in G.S. Chapter 143 Part 6 Article 21 and G.S. 160D-923. It is the intent that these regulations combine with and coordinate with the zoning ordinance regulations for the zoning district in which such property is located. Any use not permitted by the zoning regulations shall not be

permitted in the special flood hazard area, and any use permitted by the zoning regulations shall be permitted in these districts only upon meeting conditions and requirements as prescribed in this chapter.

~~The legislature of the state of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. Therefore, the city council of Lenoir, North Carolina, does ordain as follows:~~

Sec. 9-22. - Basis for establishing the special flood hazard areas.

The special flood hazard areas are those identified on the most recently adopted Flood Insurance Rate Maps (FIRMs) for Caldwell County, including revisions to data shown on the FIRMs approved by FEMA. The applicable FIRMs are incorporated by reference automatically into the City of Lenoir zoning map. The planning department shall maintain a digital or paper copy of the applicable FIRMs for public inspection. ~~under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its flood insurance study (FIS) and its accompanying flood insurance rate maps (FIRM), for Caldwell County, dated July 7, 2009, which are adopted by reference and declared to be a part of this chapter.~~

~~The initial flood insurance rate maps are as follows for the jurisdictional areas at the initial date:~~

~~Caldwell County Unincorporated Area, dated August 16, 1988.~~

Sec. 9-45. - Designation of floodplain administrator.

The Lenoir planning director, hereinafter referred to as the "floodplain administrator", is hereby appointed to administer and implement the provisions of this chapter. Administrative decisions made by the floodplain administrator pursuant to the development regulations in this Chapter may be appealed to the Lenoir Board of Adjustment, consistent with the process for appeals laid out in Sec. 1308 of Appendix A of this Code of Ordinances.

Sec. 9-48. - Corrective procedures.

- (1) Violations to be corrected. When the floodplain administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (2) Actions in event of failure to take corrective action. If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - a. That the building or property is in violation of the floodplain management regulations;
 - b. That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
 - c. That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (3) Order to take corrective action. If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the flood damage prevention ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 days. Where the floodplain administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (4) Appeal. Any owner who has received an order to take corrective action may appeal the order to the ~~local elected governing body~~Lenoir Board of Adjustment by giving notice of appeal in writing to the floodplain administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

- (5) Failure to comply with order. If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

Sec. 9-49. - Variance procedures.

- (1) The Lenoir ~~City Council~~Board of Adjustment, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this chapter.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the court, as provided in Chapter 7A of the North Carolina General Statutes.
- (3) Variances may be issued for:
- a. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - b. Functionally dependent facilities if determined to meet the definition as stated in section 9-5 of this chapter, provided provisions of subsections 9-49(9)b., c. and e. have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - c. Any other type of development, provided it meets the requirements of this section.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:
- a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location as defined under section 9-5 of this chapter as a functionally dependent facility, where applicable;
 - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

- g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this chapter, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this chapter.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the state of North Carolina upon request.
- (9) Conditions for variances:
- a. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
 - b. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

- c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - d. Variances shall only be issued prior to development permit approval.
 - e. Variances shall only be issued upon:
 - 1. Showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship; and
 - 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met.
- a. The use serves a critical need in the community.
 - b. No feasible location exists for the use outside the special flood hazard area.
 - c. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
 - d. The use complies with all other applicable federal, state and local laws.
 - e. The city of Lenoir has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

SECTION 7. Chapter 10 of the Code of Ordinances, City of Lenoir, North Carolina, “Housing” is hereby amended to read as follows:

ARTICLE I. - IN GENERAL

Sec. 10-1. - Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter.

Administrative Hearing shall mean a proceeding to gather facts needed to make an administrative decision.

Basement shall mean a portion of a building which is located partly underground, having direct access to light and air from windows located above the level of the adjoining ground.

Board shall mean the housing board of adjustment appeals.

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

Deteriorated shall mean that a dwelling is unfit for human habitation and can be repaired, altered, or improved to comply with all of the minimum standards established by this article, at a cost not in excess of ~~50 percent~~ of its value, as determined by finding of the inspector.

Determination shall mean a written, final, and binding order, requirement, or determination regarding an administrative decision.

Dilapidated shall mean that a dwelling is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this chapter, at a cost not in excess of ~~50 percent~~ of its value, as determined by finding of the inspector.

Dwelling shall mean any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith ~~any building which is wholly or partly used or intended to be used for living or sleeping by human occupants;~~ provided that temporary housing as hereinafter defined shall not be regarded as a dwelling.

Dwelling, Group shall mean a building or portion of a building intended for occupancy by several unrelated persons, in two or more sleeping units. The term group dwelling includes, but is not limited to the terms rooming house, fraternity house, dormitory, and boarding house.

Dwelling unit shall mean a single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation. ~~any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.~~

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

Garbage shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Habitable room shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers or communicating corridors, closets and storage spaces.

Housing inspector shall mean any person employed by the city, or any Caldwell County employee designated by the city, who is duly authorized and directed by the city planning director to investigate violations of the housing provisions of this Code and to take appropriate actions to enforce such provisions.

Infestation shall mean the presence, within or around a dwelling, of any insects, rodents or other pests in such number as to constitute a menace to the health, safety or welfare of the occupants or to the public.

Meaning of certain words. Whenever the words "dwelling, dwelling unit, ~~roominghousegroup dwelling, rooming-sleeping~~ unit, premises" are used in this chapter, they shall be construed as though they were followed by the words "or any part hereof."

Multiple dwelling shall mean any dwelling containing more than two dwelling units.

Occupant shall mean any person over one year of age, living, sleeping, cooking or eating in, or having actual possession of a dwelling unit or rooming unit.

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

Owner shall mean the holder of title in fee simple and every mortgagee of record. ~~any person who alone, or jointly, or severally with others: (1) Shall have title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or (2) Shall have charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this chapter, and of rules and regulations adopted pursuant to the provisions of this chapter to the same extent as if he were the owner.~~

Parties in Interest shall mean all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

Plumbing shall mean and include all of the following supplied facilities and equipment: gas pipes, gas burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinders), waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, drains, vents and any other similar supplied fixtures, together with all connections to a water, sewer or gas line.

Public authority shall mean any housing authority or any officer who is in charge of any department or branch of the government of the city, county, or state relating the health, fire,

building regulations, or other activities concerning dwellings in the city. ~~the minimum housing inspector.~~

~~Rooming unit shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.~~

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

Sleeping unit shall mean a room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Rubbish shall mean combustible and noncombustible waste materials, except garbage and ashes, and the term shall include paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, and dust.

Supplied shall mean paid for, furnished, or provided by, or under the control of, the owner or operator.

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

Unfit for human habitation shall mean that conditions exist in a dwelling which violate or do not comply with one or more of the minimum standards of fitness or one or more of the requirements established by this chapter.

Sec. 10-2. - Findings; purpose.

(a) Occupied dwellings. The existence and occupation of dwellings that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health and safety of the citizens of Lenoir. A public necessity exists for the repair, closing, or demolition of such dwellings. It is hereby found that there exist in this city dwellings that are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents, or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering the dwellings unsafe or unsanitary, or dangerous or determinantal to the health, safety, morals, or otherwise inimical to the welfare of the residents of the City.

(b) Abandoned structures. The existence of abandoned structures is also found to be determinantal to public health and safety, due to the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities. The provisions and procedures for the repair, closing, or demolition of such structures shall be the same as those prescribed herein for the repair, closing, or demolition of dwellings found to be unfit for human habitation.

~~(a) It is hereby found and declared that there exist in this city dwelling units and accessory structures which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities, and due to other conditions rendering such dwellings unsafe or unsanitary, and dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the city.~~ (b) (C) In order to protect the health, safety and welfare of the residents of the city this chapter hereby establishes and provides for administration of minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, and for the repair, closing, or demolition of abandoned structures and occupied dwellings that are found to be unfit for human habitation.

State Law reference— Exercise of police power authorized, G.S. ~~160A-441~~ 160D-1201.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

Sec. 10-26. - ~~Board of adjustment~~Housing Appeals Board.

The board of adjustment as established by section 1309 of the Zoning Ordinance (Appendix A of Lenoir's Code of Ordinances) shall hear appeals of decisions and orders of the housing inspector.

State Law reference— Housing appeals board, G.S. 160D-305; G.S. 160D-1208(a)

Sec. 10-27. - ~~Duties of inspector.~~Designation of Enforcement Officer

The ~~building inspector or planning director and~~ the minimum housing inspector ~~is~~are hereby designated as the public officers to ~~enforce the provisions of this chapter and to~~ exercise the duties and powers prescribed by the provisions of this chapter. ~~Such inspector shall:~~

~~Investigate the dwelling conditions, and inspect dwellings and dwelling units, located in the city, in order to determine which dwellings and dwelling units are unfit for human habitation, and for the purpose of carrying out the objectives of this chapter with respect to such dwellings and dwelling units;~~

~~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;~~

~~Keep a record of the results of inspections made under this chapter and an inventory of those dwellings that do not meet the minimum standards of fitness prescribed by this chapter; and~~

~~To perform such other duties as may be prescribed by the provisions of this chapter.~~

~~(Code 1977, § 9-2062)~~

State Law reference— Officer to be designated, G.S. ~~160A-443(1).~~160D-1203(1)

Sec. 10-28. - Powers of ~~inspector~~ public officer.

The ~~inspector~~ public officer is authorized to exercise ~~such any~~ powers ~~as may be necessary or~~ convenient to carry out and effectuate the purpose and provisions of this chapter, including the following powers in addition to others granted by the provisions of this chapter:

- (1) To investigate the dwelling conditions in the city's planning and development regulation jurisdiction in order to determine which dwellings therein 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 manner as to cause the least possible inconvenience to the persons in possession; ~~and~~
- (4) To appoint and fix the duties of such officers, agents, and employees as he deems necessary to carry out the purposes of this chapter; and-
- (4)(5) To delegate any of his or her functions and powers under the ordinance to other officers and other agents.

State Law reference— Similar provisions, G.S. ~~160A-448~~160D-1210.

Sec. 10-29. - Right of access.

~~(a) For the purpose of making inspections, the inspector is hereby authorized to enter, examine, and survey at all reasonable times all dwellings, dwelling units, rooming units and premises. The owner or occupant of every dwelling, dwelling unit, or rooming unit, or the person in charge thereof, shall give the inspector free access to such dwelling, dwelling unit, or rooming unit and its premises at all reasonable times for the purposes of such inspection, examination, and survey. (b) Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, and its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this article or with any lawful order issued pursuant to the provisions of this chapter.~~

~~(Code 1977, § 9-2064)~~

When the public officer has reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure, he or she shall have the right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

State Law reference— ~~Power to inspect, G.S. 160A-412, 160A-424, 160A-448.~~G.S. 160D-1207

Sec. 10-30. - Methods of service of complaints and orders.

- (a) Complaints or orders issued by a public officer pursuant to this Chapter shall be served upon persons either personally or by certified mail. When service is made by certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
- ~~(a) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the jurisdiction 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 proceedings shall be posted in a conspicuous place on the premises thereby affected. Complaints or orders issued by the inspector shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons are unknown and the same cannot be ascertained by the inspector, he shall make an affidavit to that effect, and the serving of such complaint or order upon such person may be made by publishing the same once each week for two successive weeks in a newspaper, printed and published in the city. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order.~~
- (b) —
- (c) — (Code 1977, § 9-2066)

State Law reference— Similar provisions, G.S. ~~160A-445~~160D-1206.

Sec. 10-31. - Preliminary investigation; notice; hearing.

Whenever a petition is filed with the inspector by a public authority or by at least five residents of the city jurisdiction charging that any dwelling or dwelling unit is unfit for human habitation, or ~~whenever when~~ it appears to the inspector, ~~upon inspection,~~ that any dwelling or dwelling unit is unfit for human habitation, ~~he the inspector~~ shall, if ~~his a~~ preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings ~~or dwelling unit~~ a complaint stating the charges in that respect and containing a notice that an administrative hearing will be held before the inspector (or the inspector's designated agent) at the location of the dwelling or another place therein fixed. ~~a place therein fixed, The~~

hearing shall be not less than ten nor more than 30 days after the serving of ~~such~~ the complaint. The owner of ~~any party and parties~~ in interest shall have be given 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. ~~Notice of the hearing shall also be given to at least one of the persons signing a petition relating to the dwelling. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard.~~ The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the inspector.

State Law reference— Similar provisions, G.S. ~~160A-443(2)~~. 160D-1203(2)

Sec. 10-32. - ~~Procedure after hearing.~~ Orders.

If, after notice and an administrative hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, the officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner one of the following orders, as appropriate:

- (a) *Order to Repair, Alter, or Improve.* If the public officer determines that the dwelling is *deteriorated*, the order shall require the owner, within a specified period of time not to exceed 90 days, to repair, alter, or improve the dwelling in order to render it fit for human habitation. If continued occupancy during the time allowed for repair will present a significant threat of bodily harm, the order may require that the property be vacated and closed until repairs are made, 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. The order shall state that the failure to make timely repairs as director in the order shall make the dwelling subject to the issuance of an unfit order under Sec. 10-33(a) of this Chapter.
- (b) *Order to Remove or Demolish.* If the public officer determines that the dwelling is dilapidated, the order shall require the owner, within a specified period of time not to exceed 90 days, to remove or demolish the dwelling. However, notwithstanding any other provision of the law, if the dwelling is located in a historic district and the Historic District

Commission determines, after an administrative hearing as provided by ordinance, 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.

~~(a)After the notice and hearing, the inspector shall state in writing his determination whether such dwelling or dwelling unit is unfit for human habitation, and, if so, whether it is deteriorated or dilapidated.(b)If the inspector determines that the dwelling or dwelling unit is deteriorated, he shall state in writing his findings of fact in support of that determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to repair, alter, and improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this article within a specified period of time, not to exceed 90 days. The order may also direct and require the owner to vacate and close such dwelling or dwelling unit until such repairs, alterations, and improvements have been made.(c)If the inspector determines that the dwelling is dilapidated, he shall state in writing his findings of fact to support such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to vacate and close the dwelling, and to remove or demolish the same within a specified period of time, not to exceed 90 days.~~

~~(Code 1977, § 9-2065(b))~~

State Law reference— Similar provisions, G.S. ~~160A-443(3)~~.160D-1203(3)

Sec. 10-33. - Failure to comply with order.

(a) *Repair, closing, and posting.* If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered, or improved or to be vacated and closed, and the public officer may cause to be posted on the main entrance of any dwelling 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 Class 1 misdemeanor. The duties of the public officer set forth in this subdivision shall not be exercised until the governing board shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to he particular property or properties that the public officer shall have found to be unfit

for human habitation and which property or properties shall be described in the ordinance. This ordinance shall be recorded with the Caldwell County register of deeds and shall be indexed in the name of the property owner in the grantor index.

(b) *Demolition.* If the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in this subdivision shall not be exercised until the governing board shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties that the public officer shall have found to be unfit for human habitation and which property or properties 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. This ordinance shall be recorded with the Caldwell County register of deeds and shall be indexed in the name of the property owner in the grantor index.

State Law reference— Similar provisions, G.S. 160D-1203(4-5)

~~(a) *In personam remedy.* If the owner of any deteriorated dwelling or dwelling unit shall fail to comply with an order of the inspector to repair, alter, or improve the same within the time specified therein, or if the owner of a dilapidated dwelling shall fail to comply with an order of the inspector to vacate and close, and remove or demolish the same within the time specified therein, the inspector shall submit to the city council at its next regular meeting a resolution directing the city attorney to petition the superior court for an order directing such owner to comply with the order of the inspector, as authorized by G.S. 160A-446(g). Alternatively, the inspector may file a civil action in the nature of summary ejectment in accordance with G.S. 160A-443(7).~~

~~(b) *In rem remedy.* After failure of an owner of a deteriorated dwelling or dwelling unit, or of a dilapidated dwelling, to comply with an order of the inspector within the time~~

~~specified therein, if injunctive relief has not been sought or has not been granted as provided in subsection (a), the inspector shall submit to the city council an ordinance ordering the inspector to cause such dwelling or dwelling unit to be repaired, altered, improved, or vacated and closed and removed or demolished, as provided in the original order of the inspector, and pending such removal or demolition, to placard such dwelling as provided by G.S. 160A-443 and section 10-34.~~

Sec. 10-34. - ~~In rem action by inspector; placarding.~~ Abandonment of Intent to Repair

If a dwelling has been vacated and closed for a period of one year pursuant to an ordinance adopted pursuant to Sec. 10-33 or after a public officer issues an order or proceedings have commenced under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed as provided in Sec. 10-32, then the governing board may 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, and welfare of the local government 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 that might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing board may, after the expiration of such one-year 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 fifty percent (50%) 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.
- 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 fifty percent (50%) 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 with the Caldwell County 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 public officer shall effectuate the purpose of the ordinance.

State Law reference— Similar provisions, G.S. 160D-1203(6)

- (1) ~~After failure of an owner of a dwelling or dwelling unit to comply with an order of the inspector issued pursuant to the provisions of this chapter, and upon adoption by the city council of an ordinance authorizing and directing him to do so, as provided by G.S. 160A-443(4) and section 10-33, the inspector shall proceed to cause such dwelling or dwelling unit to be repaired, altered, or improved to comply with the minimum standards of fitness established by this chapter, or to be vacated and closed and removed or demolished, as directed by the ordinance of the city council and shall cause to be posted on the main entrance of such dwelling or dwelling unit 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."~~
- (2) ~~Each such ordinance shall be recorded in the office of the register of deeds in the county wherein the property is located, and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160A-443(5).~~

Sec. 10-35. - Appeals from orders of inspector Remedies.

- (a) An appeal from any decision or order of the public officer is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer, board, or commission of the local government. An appeal from any decision or order of the housing inspector may be taken by any person who is the subject of the decision or order. Any appeal from the inspector-public officer shall be taken within ten days from the rendering of the decision or notice service of the order by filing with the public officer and with the board of adjustment a notice of appeal that, ~~and shall be taken by filing a notice of appeal with the planning department which shall specify the grounds upon which the appeal is based.~~ Upon the filing of any notice of appeal, the ~~inspector-public officer~~ shall forthwith transmit to the board of adjustment all papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the ~~housing inspector~~ public officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a

decision of the housing inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing of the board of adjustment, unless the ~~inspector~~public officer certifies to the board of adjustment, after the notice of appeal is filed with ~~him~~the officer, that by reason of the facts stated in the certificate, a copy of which shall be furnished the appellant, a suspension of ~~his~~the requirement would cause imminent peril to life or property; ~~in which~~ In that case the requirement ~~shall~~is not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the ~~housing inspector~~public officer, by the board of adjustment, or by a court of record upon petition made pursuant to G.S. ~~160A-446(f)~~160D-1208(d). ~~and the provisions of this article.~~

(b) The board of adjustment shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the inspector, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the inspector. The board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance ~~shall be~~is observed, public safety and welfare secured, and substantial justice done.

(c) Every decision of the board of adjustment is subject to review by proceedings in the nature certiorari instituted within 15 days of the decision of the board, but not otherwise.

(d) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation G.S. Chapter 160D Article 12, or of any ordinance or code adopted under the authority of the same or any valid order or decision of the public officer or board made pursuant to any ordinance or code adopted under authority of G.S. 160D Article 12, the

public officer or board may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, or use; to restrain, correct, or abate the violation; to prevent the occupancy of the dwelling; or to prevent any illegal act, conduct, or use in or about the premises of the dwelling.

State Law reference – Similar provisions, G.S. 160D-1208

Sec. 10-36. - Petition to superior court.

Any person aggrieved by an order issued by the public officer or a decision rendered by the board of adjustment may petition the superior court for an injunction restraining the public officer from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the public officer pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the court on a petition within 20 days and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It is not necessary to file bond in any amount before obtaining a temporary injunction under this subsection.

~~Any person aggrieved by an order issued by the inspector or a decision rendered by the board shall have the right, within 30 days after issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining the inspector pending a final disposition of the cause.~~

State Law reference— Similar provisions, G.S. ~~160A-446(f)~~ 160D-1208(d)

Sec. 10-37. - ~~Costs~~Liens.

- (a) The amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the public officer, caused to be made or done by the inspector shall be a lien against the real property upon which such the cost was incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as the lien for special assessment provided in Article 10 of Chapter 160A of the General Statutes.

(b) If the real property upon which the cost was incurred is located in the corporate limits of the city, then the amount of the cost is also 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.

~~(a)(c)~~ If the dwelling is removed or demolished by the public officer, the local government 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 public officer, shall be secured in a matter 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.

State Law reference— Similar provisions, G.S. ~~160A-443(6);160D-1203(7) special assessments,~~ G.S. Ch. 160A, Article 10.

Sec. 10-38 Civil Action.

If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the local government 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 defendant any person occupying such dwelling. At the hearing pursuant to G.S. 160D-1203(8), the public officer shall produce a certified copy of the ordinance adopted pursuant to 10-33 authorizing the officer to proceed to vacate the occupied dwelling.

An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the city has ordered the public officer to proceed to exercise his duties under Sec. 10-33 to vacate

and close or remove and demolish the dwelling.

State Law reference— Similar provisions, G.S. 160D-1203(8)

Sec. 10-39 Additional Notices to Affordable Housing Organizations.

Whenever a determination is made pursuant to Sec. 10-32 that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this Chapter, 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 public officer, 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 public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition.

State Law reference— Similar provisions, G.S. 160D-1203(9)

Secs. 10-3840—10-55. - Reserved.

ARTICLE III. - MINIMUM STANDARDS

Sec. 10-56. - Fitness for dwellings and dwelling units.

The public officer may determine that a dwelling is unfit for human habitation if the officer finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety, or welfare of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the jurisdiction.

- (a) Every dwelling and unit used as a human habitation, or held out for use as a human habitation, shall comply with all of the minimum standards of ~~fitness for human habitation~~ this Article and all of the requirements of chapter 4 of this Code.

- (b) No person shall occupy as owner-occupant, or let to another for occupancy or use as a human habitation, any dwelling or dwelling unit which does not comply with all of the minimum standards of ~~fitness for human habitation~~this Article and all of the requirements of chapter 4 of this Code.

State Law reference—~~Permits generally, G.S. 160A-417 et seq.~~160D-1205

Sec. 10-57. — Group Dwellings (Roominghouses).

All of the provisions of this chapter, and all of the minimum standards and requirements of this chapter, shall be applicable to ~~roominghouses~~group dwellings, and to every person who operates a ~~roominghouse~~group dwelling, or who occupies or lets to another for occupancy any ~~rooming sleeping unit~~ in any ~~roominghouse~~group dwelling, except as provided in this section. It is the intent that these regulations combine with and coordinate with the zoning ordinance regulations for the zoning district in which such property is located. Any group dwelling not permitted by the zoning regulations shall not be allowed, regardless of compliance with the minimum standards of this section. Any group dwelling permitted by the zoning regulations shall be permitted only upon meeting conditions and requirements as prescribed in this chapter.

~~(3)~~(1) Water closet, hand lavatory, and bath facilities. At least one water closet, lavatory basin, and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each four ~~rooms~~sleeping units within a ~~roominghouse~~group dwelling wherever such facilities are shared. All such facilities shall be located within the residence building served and shall be directly accessible from a common hall or passageway and shall be not more than one story removed from any of the persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times. Such required facilities shall not be located in a cellar.

~~(4)~~(2) Minimum floor area for sleeping purposes. Every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.

(5)(3) Sanitary conditions. The operator of every ~~roominghouse-group dwelling~~ shall be responsible for the sanitary maintenance of all walls, floors, and ceilings, and for the sanitary maintenance of every other part of the ~~roominghouse-dwelling~~. He shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the ~~roominghouse-group dwelling~~ is contained is leased or occupied by the operator.

(6)(4) Sanitary facilities. Every water closet, flush urinal, lavatory basin, and bathtub or shower required by subsection (1) of this section shall be located within the ~~roominghouse-same structure as the sleeping quarters~~ and within a room which affords privacy and are separate from the habitable rooms, and which are accessible from a common hall and without going outside the ~~roominghouse-dwelling~~ or through any other room therein.

SECTION 8. APPENDIX A of the Code of Ordinances, City of Lenoir, North Carolina, “Zoning” is hereby amended to read as follows:

ARTICLE II. - AUTHORITY AND ENACTMENT CLAUSE

Pursuant to the authority conferred by North Carolina General Statutes Chapter 160D-160A-381 through ~~160A-394~~, the City Council of the City of Lenoir, North Carolina, does hereby ordain and enact into law the following articles and sections.

ARTICLE IV. -DEFINITIONS

Accessory Use or Building - A use or building subordinate to the principal use or building located on the same lot and used for purposes incidental to the principal use or building.

Administrative Decision - Decisions made in the implementation, administration, or enforcement of development regulations set forth in this chapter that involve the determination of facts and the application of objective standards as set forth herein. See also Determination.

Adult Day Care Center - A facility which provides daytime care for six (6) or more adults of whom one or more are unrelated and who are aged, handicapped, or disabled and are in need of adult supervision or provided services to meet their needs.

Board of Adjustments - A semi-judicial body composed of representatives from or for the planning area which are given certain powers under and relative to the ordinance.

Building - Any structure used or intended for supporting or sheltering any use or occupancy. ~~put together for the support, shelter, or enclosures of persons, animals, and property, and having a roof.~~

~~Conditional Use - A use that, would not be appropriate generally or without restrictions throughout the zoning district but which, if controlled as to number, area, location, or relation to the safety, or general welfare may be permitted.~~

Determination - A written, final, and binding order, requirement, or determination regarding an administrative decision.

Developer - A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

Development - Any of the following:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The excavation, grading, filling, clearing, or alteration of land.
- c. The subdivision of land as defined in G.S. 160D-802.
- d. The initiation or substantial change in the use of land or the intensity of use of land.

Development approval – An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to G.S. 160D, including plat approvals, permits issued, development agreements entered into, and building permits issued.

Down-zone – A zoning ordinance amendment or map amendment that affects an area of land in one of the following ways: (1) by decreasing the development density of the land to be less dense than was allowed under its previous usage or (2) by reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage (state law reference: G.S. 160D-601(d)).

Dwelling - Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. ~~A building or portion of a building arranged or designed to provide living quarters for one or more families.~~

Dwelling, Group - A building or portion of a building intended for occupancy by several unrelated persons, in two or more sleeping units. The term group dwelling includes, but is not limited to the terms rooming house, fraternity house, dormitory and boarding house.

Dwelling, Single-family attached (Townhouses or row houses) - A single-family dwelling unit constructed in a series or groups of attached units with a common dividing side wall with property lines separating such units. A single ~~housing~~ dwelling unit occupies the area from ground to roof and may include front and/or back yard areas.

Dwelling, Single-family detached - A detached building that contains one dwelling unit, other than a manufactured home, ~~detached dwelling of one unit, other than a manufactured home,~~ designed for occupancy exclusively by one family.

Dwelling, Two-family -A detached building including two individual units, also, known as a duplex.

Dwelling Unit – A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

~~Dwelling, Group – A building or portion of a building intended for occupancy by several unrelated persons. The term group dwelling includes, but is not limited to the terms rooming house, fraternity house, dormitory and boarding house.~~

Dwelling, Multi-family - A building containing three or more dwelling units used, designed for or occupied by three or more families living independently of each other, with separate housekeeping, sleeping and cooking facilities for each.

Dwelling, Multi-family low-rise - A low-intensity multi-family development. Often called garden apartments, buildings are typically arranged around common courtyards or greenspace, with patios, porches, decks, or other private amenities for each unit. Units are usually accessed through private entrances directly from the outside. This definition includes the ~~conversions~~ conversion of existing residential or non-residential buildings into multiple apartments, when the densities remain below the thresholds established for low-rise apartments for each zoning district.

Dwelling, Multi-family high-rise - Any multi-family development that exceeds the density or height allowances for low-rise multi-family. Units may be accessed directly from the outside, or through shared internal corridors. Green space and other community amenities such as playgrounds and clubhouses are commonly located on the same site, along with ~~surface~~ parking for residents and guests.

Dwelling Unit - A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Dwelling Unit, Zero-Lot-Line - Single family, detached or semi-detached developments on individual lots, where zero foot side setbacks are used on a maximum of one side of a lot.

Erect - Build, construct, rebuild, reconstruct as the same are commonly defined.

Evidentiary hearing – A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under this Chapter.

Extraterritorial Jurisdiction - A defined area adjacent to the corporate limits of a city based upon existing or projected urban development in areas of critical concern to the city.

Landscape Buffer - A strip of land along the perimeter of a lot. Such a buffer must be maintained as a green area, planted with grass, shrubs, trees, or other ornamental vegetation.

Legislative decision - The adoption, amendment, or repeal of a regulation under this Chapter, including zoning map amendments.

Legislative hearing - A hearing to solicit public comment on a proposed legislative decision.

Loading Space, Off-Street - Space conveniently located for pickups and deliveries, scaled to the delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled.

Planning and Development Regulation Jurisdiction – The geographic area within which the city applies the development regulations authorized by G.S 160D, including the entire corporate limits of the city as well as the areas shown on the Official Zoning Map located in the Extra-Territorial Jurisdiction.

Planning Board - A commission appointed by the City Council and by the County Commissioners for the following purposes:

— To develop and recommend long range development plans and policies.

— To advise the City Council in matters pertaining to current physical development and zoning for the City's planning jurisdiction.

Public Service Facility - A facility that is owned, operated, or financed, in whole or in part, by any public or governmental entity, and is dedicated to the provision of services to the general public. This includes public safety facilities (EMS, police, and fire protection), schools and education, hospitals and health care, and the public provision of social services.

Quasi-Judicial Decision - A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations.

Recreation, Indoor - Uses that provide recreational opportunities for adults and children located primarily within enclosed buildings. Indoor recreation uses include general gaming establishments, movie theaters, bowling alleys, arcades, indoor roller skating and ice skating rinks, escape rooms, laser tag, indoor play structures, trampolines, indoor rock climbing walls, museums and hands-on play spaces, and similar uses. Adult gaming establishments and billiard/pool halls are regulated separately and are not included in indoor recreation uses.

Sign - The term sign shall mean and include billboard; poster panel, freestanding ground sign; roof sign; projecting sign; pylon sign; illuminated sign; and sign announcement, declaration, demonstration, display, ribbon, banner, illustration, or insignia used to advertise or promote the interest of any person when the same is placed in view of the general public.

Special Use – A use that would not be appropriate generally or without restrictions throughout the zoning district but which, if controlled as to number, area, location, or relation to the safety, or general welfare may be permitted. Such uses may only be established after approval of quasi-judicial permit.

Street - A public thoroughfare which affords the principal means of access to abutting property.

ARTICLE V. - ESTABLISHMENT OF ZONING DISTRICTS AND APPLICATIONS OF REGULATIONS

500 Jurisdiction - The provisions of this ordinance shall apply within the City of Lenoir's corporate limits as now or hereafter fixed and its extraterritorial planning jurisdiction, as established on the map entitled Official Zoning Atlas of the City of Lenoir, North Carolina. Said atlas and amendments thereto and all explanatory matter thereon accompanies and is made a part of this ordinance; a copy of the map shall be maintained for public inspection in the Planning Department office and a digital copy shall be made available on the City's website. Records of prior zoning maps and map amendments shall be maintained by the Planning Department and be provided for public inspection upon request. ~~this ordinance shall be on file in the office of the City Clerk.~~

500.1 Bona fide farms in the ETJ – Property that is located in the City's extraterritorial jurisdiction (ETJ) that is used for bona fide farm purposes is exempt from the zoning regulations in this Chapter, as defined in G.S. 160D-903(a) and (c). Accessory farm buildings of bona fide farms in the ETJ shall also be exempt from building codes the same as county zoning. For purposes of complying with State or federal law, property that is exempt from municipal zoning pursuant to this subsection is subject to the county's floodplain regulation or all floodplain regulation provisions of the county's unified development ordinance.

State Law reference: G.S. 160D-903.

501 District Boundaries - The boundaries of the zoning districts, hereby established and as shown on the Official Zoning Atlas of the City of Lenoir, North Carolina, together with all explanatory matters thereon, are hereby adopted by reference and declared to be part of this ordinance.

If, in accordance with the provisions of this ordinance and North Carolina General Statutes ~~160D-601 through 160D-708-160A-381 through 160A-394~~, changes are made in district boundaries or other matter portrayed on the Official Zoning Atlas, such changes shall be entered on the Official Zoning Atlas by the Planning Department within seven (7) days after the amendment has been approved by the City Council.

No changes of any nature shall be made on the Official Zoning Atlas or matter shown thereon except in conformity with the procedures set forth in this ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered as a violation of this ordinance.

Regardless of the existence of any purported copy of the Official Zoning Atlas, the Zoning Atlas which shall be located in the office to the Planning Department shall be the final authority as to the current zoning status of land, water areas, buildings and other structures.

502 Establishment of Zoning Districts - For the purpose of this ordinance the City of Lenoir and its extraterritorial planning district is divided into the following classes of zones:

The following Statements of Intent are hereby adopted for each district:

c. *R - 12 Residential (Single-family) District* is intended to establish and preserve land within the city for medium density single-family residences and compatible land uses. Regulations are designed to allow predominately single-family residences at medium densities, with duplex, townhome, low-rise apartments, and planned residential developments allowed at compatible densities as ~~conditional~~ special uses. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

d. *R - 9 Residential (Multi-family) District* is intended to establish and preserve areas of land within the city for medium density single-family residences, doublewide manufactured homes, duplexes, townhomes, low-rise garden apartments, and other compatible land uses, with higher density multi-family apartments allowed as ~~conditional~~ special uses. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

e. *R - 6 Residential (Multi-family) District* is intended to establish and preserve areas of land within the city for medium and high density residences, including single family, doublewide manufactured homes, duplexes, townhomes, multi-family developments, and other compatible uses at appropriate densities. Higher density multi-family developments are allowed as ~~conditional~~ special uses. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

q. *CZ- * (Conditional Zoning District)* is intended for use in situations where conventional zoning standards are inadequate to facilitate a particular desirable development or to fully mitigate concerns over the impact of such a development. A Conditional Zoning district may be based on a conventional "base" zoning district, with additional conditions added that are reasonable and necessary to permit the proposed use and development of the property, or it may contain regulations that are completely unique to the district. Conditional Zoning districts are intended to achieve results equal to or better than would be permissible under an existing zoning district.

r. *S-1 Special Use Overlay District (REPEALED)* ~~The process of allowing uses beyond what is permitted by right in a particular zoning district through the adoption of a Special Use overlay district via a legislative process followed by the adoption of a special use permit via a quasi-judicial process was repealed and replaced with a legislative process of "Conditional Zoning" (see Article VIII, Section 820). Projects previously approved utilizing the special use process may continue to function under the terms and conditions set forth under the initial approval of the special use permit. Special use overlay districts shall be deemed automatically converted to conditional zoning districts upon adoption of this ordinance, with any site plan or condition set forth under the initial approval of the quasi-judicial use permit that accompanied the special use overlay district to be considered incorporated into the provisions of the conditional zoning district. The base zoning of the parcel shall continue to apply. continue to be depicted on the~~

~~Official Zoning Map, but in no case shall lands be re-zoned to have special use overlay districts in the future. Section 900.8, "Expiration of Permits" shall continue to apply to special use permits issued prior to the adoption of this ordinance. If a special use permit is allowed to expire, the special use overlay district shall also be considered null and void.~~

508 Two Dwelling Units on the Same Lot - In zoning districts where a second dwelling unit (accessory apartment, accessory cottage) is permitted or ~~conditionally~~ permitted as a Special Use to be placed on a lot that already has a principal use single family dwelling, such units are limited to lots meeting the minimum lot size for a two-family (duplex) use. Secondary dwelling units are limited to 30 percent of the square footage of the principal dwelling unit. A minimum of two off-street parking spaces must be provided on lots with a principal and secondary dwelling unit.

Notwithstanding the above, a single Temporary Health Care Structure shall be a permitted accessory use on any lot legally occupied with a single family dwelling, in accordance with N.C.G.S. Sec. 160D-915~~160A-383.5~~, as amended from time-to-time.

509 Determinations and Interpretations – Any staff member of the Planning Department, as authorized by the Director, may make determinations and interpretations on the provisions in this ordinance while engaged in the administration and enforcement of the ordinance. Whenever a property owner or authorized agent disagrees with the interpretation or application of this ordinance made by planning department staff, or otherwise requests that a written determination be made, the Planning Director shall make the final determination and provide written notice of the determination to the property owner and to the party who sought the determination, if different from the owner, pursuant to G.S. 160D-403(b). It shall be the responsibility of the land owner, applicant, or person who sought the determination to post notice pursuant to G.S. 160D-403(b), and the posting of such notice is not required.

510 Development Approvals Run with the Land – Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Chapter attach to and run with the land (state law reference: G.S. 160D-104).

ARTICLE VI. - PERMITTED USE CHART

General

~~C~~ Conditional Use approved by City Council

~~X~~ Permitted Use

~~Blank~~ Prohibited Use

~~All references to sales, stores, and shops are intended to mean retail sales unless stated otherwise.~~

FOOTNOTES (SECTION 600, TABLE A):

A4. Conditional Use Permits may be approved by the Lenoir City Council, after review by the Lenoir Planning Board, for the re-establishment or expansion of an existing manufactured home park, in accordance with the provisions of Section 902. New manufactured home parks are prohibited.

FOOTNOTES, SECTION 600, TABLE B:

B4. See specific performance standards for conditional use permit applications for communication towers in Appendix A, Section 910.

610 Performance Standards for Crematories - Crematories may be established as an accessory use to a funeral home in the O&I, B-2, ~~B-4~~, B-5, and B-7 zoning districts and as a principal use in the B-2, I-1, and I-2 zoning districts, when the following requirements are met:

ARTICLE VII. – GENERAL PROVISIONS

~~713 Stop Orders Reserved.~~

~~Whenever any building or structure is being demolished, constructed, altered, or repaired in a hazardous manner, that endangers life or property, or in substantial violation of this ordinance, the zoning officer may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped. The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor, and the~~

~~conditions under which the work may be resumed. The owner or builder may appeal from a stop order to the City Manager within a period of five (5) days after the order is issued. Notice of appeal shall be given in writing to the City Manager with a copy to the zoning officer. The City Manager shall promptly conduct a hearing, at which the appellant and the zoning officer shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible. Pending the ruling by the City Manager on an appeal, no further work shall take place in violation of a stop order. Violation of a stop order shall constitute a misdemeanor.~~

714 Design Standards For Commercial, Office, Institutional And Government Buildings

714.2 Applicability

These standards and guidelines apply to the following types of development:

- (a) All new non-residential, attached single family, and multi-family structures and developments located in the R-R, R-20, R-15, R-12, R-9, R-6, O&I, B-1, B-2, ~~B-4~~, and B-7 zoning districts.
- (b) Expansions of existing projects described in subsection (a) above.
- (c) Where such expansions meet the definitions of subsections (a) and (b) above, and such additions result in a 50% or greater increase in building size, the pre-existing portions of the same commercial, office, institutional, or government building and the development site must be brought into compliance with these design standards.
- (d) When a substantial improvement is made to any existing structure meeting the definition of subsection (a) above, the pre-existing portions of the building and building site must be brought into compliance with these design standards.
- (e) When a structure meeting the definition of subsection (a) above sustains damage exceeding 50% of its tax value at the time of the damage, all repairs, alterations, or reconstruction must be in compliance with these design standards.
- (f) Modifications to designated historic structures are excluded from subsections (c) and (d), when the design standards would require modifications that would compromise the historic character of the structure. Site improvements may still be required.

~~715 Performance Standards for Crematories~~

~~Crematories may be established as an accessory use to a funeral home in the O&I, B-2, B-4, B-5, and B-7 zoning districts and as a principal use in the B-2, I-1, and I-2 zoning districts, when the following requirements are met:~~

- ~~1. A crematory shall have a licensed crematory manager on staff.~~
- ~~2. All crematory operations shall be conducted in the principal building or within an approved accessory building on the main premises of the Funeral Home or upon a lot directly adjacent to the main premises.~~
- ~~3. No crematory use may be established on a lot or parcel located within 500 feet of any residential district.~~
- ~~4. A crematory must comply and remain in compliance with all applicable public health and environmental laws and rules and must contain the equipment and meet all of the standards established by the North Carolina Crematory Act, as amended or superseded, and any additional rules and regulations issued by the North Carolina Board of Funeral Services.~~

~~716 Performance Standards for Adult Gaming Establishments~~

- ~~1. Adult Gaming Establishments must be located at least 350 ft. away from any residential zoning district, measured from the edge of the residential district to the closest door of the adult gaming establishment open to the public in a straight line.~~
- ~~2. Adult Gaming Establishments must be located at least 1,000 ft. away from any school, youth day care, church, park, or playground, measured from the property line of the protected use to the closest door open to the public of the adult gaming establishment in a straight line.~~
- ~~3. Adult Gaming Establishments must be located at least 1,000 ft. away from any other Adult Gaming Establishment, Adult Use, Liquor (ABC) Store, or Addiction Treatment and Recovery Facility, measured from door to door in a straight line.~~
- ~~4. Alcohol Sales are prohibited.~~
- ~~5. Hours of operation are limited to the hours between 11 a.m. and 12:00 midnight.~~
- ~~6. Adult Gaming Establishments are limited to 1,500 sq. ft. of floor area dedicated to gaming operations and must provide 1 parking space for every 150 sq. ft. of floor area.~~
- ~~7. A zoning permit issued by the Planning and Community Development department is required prior to the establishment of any Adult Gaming Establishment within the City.~~

ARTICLE VIII. – ZONING DISTRICT REGULATIONS AND DEVELOPMENT STANDARDS

811.1 Design Criteria

c. Building Use

The first floor (street level) of any ~~new~~-multistory building within the National Register Historic District shall devote the first floor area to ~~nonresidential active uses that are open to the public~~ (retail, service, or office uses). First floor uses that are not open to the public (private offices, residential uses, and similar uses) shall be allowed only with a Special Use Permit, ~~that are listed as Permitted or Conditional Uses in the Central Business/B-3 zoning district.~~

817 B-6 (~~Traditional~~ Transitional Business District) Design Standards

817.1—817.4 Reserved

817.5 Design Standards

In a pro-active response to the potential for incompatible development styles in the ~~Exclusive~~ Transitional Business District, this zoning district contains development standards related to architecture and site design that are not typically required in conventional zoning ordinances. These standards are adopted to help minimize the negative impacts that new development may have on the neighborhoods surrounding the General Business or Highway Business Districts, allowing for the incremental transition of these areas to a mix of commercial and residential uses while eliminating the pressure to expand more intense commercial zoning districts into previously exclusively residential areas.

817.6 Primary Architecture

While conventional zoning techniques are focused on the separation of land uses rather than building appearance, the requirements and standards of the ~~Highway~~ Transitional Business District are intended to promote the value of proper scale and a sense of community as a means integrating land uses. Therefore, new structures shall have an exterior appearance that is complementary to the various residential architectural styles found in the adjoining neighborhoods. While it is not feasible for most commercial buildings to appear exactly as single-family homes, commercial buildings in the ~~Highway~~ Transitional Business District can be designed so that nearby residential areas remain desirable places to live. At a minimum, the following architectural and site design standards shall be complied with on all new structures intended for non-residential use.

820 Additional Procedures for Conditional Zoning District Map Amendments

Where a zoning map amendment has been proposed to rezone property to a Conditional Zoning district, the following ~~additional~~ procedures shall apply in addition to the requirements for map amendments prescribed by Article XIV of the zoning ordinance.

820.2 Conditions on Use and Development

The applicant shall submit a Concept Plan and written list of all proposed conditions on the use or development of the subject property as part of the application. The Concept Plan shall serve as the basis for future development of the property subject to the approved Conditional Zoning ordinance. Specific conditions may be proposed by the applicant, planning department staff, planning board, or City Council, but only those conditions approved by the City Council and consented to by the applicant in writing may be incorporated into the zoning regulations. Unless consented to by the applicant in writing, the City may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to local government ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use of the site.

State law reference – G.S.160D-703(b)

820.4 Applicability of Conditions

Only those conditions that are mutually agreed to by the City Council and the applicant shall become binding on the applicant and their successors in interest. Any additionally imposed conditions or modifications to the Concept Plan shall be agreed to by the applicant prior to the adoption of the ordinance amending the Official Zoning Map. The ordinance must contain a signature block for the applicant to sign, acknowledging consent to the imposed conditions. The ordinance shall not be considered in full force and effect until it is signed by the Mayor/Mayor Pro Tempore, the City Clerk and the applicant, and recorded with the register of deeds.

820.6 Modification and Repeal

(1) *Minor Modifications.* Subsequent development applications may incorporate minor changes from the adopted Concept Plan, without the need to amend the Special Use Permit, where the Planning Director determines that the changes:

- (A) Continue to comply with written conditions and standards of the Conditional district zoning ordinance and all other applicable development regulations; and
- (B) Are necessary to comply with a development regulation or accommodate a physical site constraint that was not known at the time of adoption of the Concept Plan and would not significantly alter the development's general function, form, intensity, character, demand on public facilities, impact on adjacent properties, or other characteristic from that indicated by the conditional district approval.

(2) Major Modifications/Permit Amendments. Any requests for changes or modifications to the Concept Plan that do not meet the standards for minor modifications above, and all requested text amendments, are considered to be major modifications and shall follow the same approval process as an initial zoning map amendment to a conditional district (see Sec. 820.3 and Sec. 1402). In any case, the following changes from the Concept Plan approval shall always constitute a major change:

- (A) A change in a condition of approval;
- (B) A change in uses permitted or the density of overall development.
- (C) A change greater than 20 percent in the ratio of gross floor area devoted to residential vs. non-residential uses in a mixed-use development; and
- (D) An increase greater than ten percent in the amount of land devoted to nonresidential uses.

(3) Determination to be made in writing. Requests for minor modifications may be made through a subsequent development application, or the applicant may request a stand-alone determination and approval from the Planning Director on a proposed modification prior to making application for a subsequent development approval (e.g. a plat, a zoning permit). The determination shall be made in writing, and may be provided to the applicant in print or electronic form.

(4) Repeal. Unless otherwise specified in the conditional district ordinance, a conditional district, once adopted, cannot be repealed except through a zoning map amendment to remove the conditional district overlay and revert to the base zoning, or a different conventional zone, in accordance with the procedures in Sec. 1402 of this ordinance. The map amendment process to repeal a conditional district may be initiated by the property owner, or may be initiated by the city if development activities on the property have been conducted in violation of the provisions of the conditional district.

~~An approved Conditional Zoning district may only be modified in accordance with the procedures set forth for its original approval.~~

ARTICLE IX. - ~~SPECIAL REVIEW PROCEDURES FOR~~ CONDITIONAL SPECIAL USES

~~The purpose of this Article is to insure adequate review of specific development schemes that have direct influence on neighboring or contiguous land-use districts. This review is intended to protect the private and public values and interest in residential and business development. This review is established in order to approach the development of specific uses and or land development, in a consistent manner, designed to address unique situations.~~

900 ~~Conditional~~ Special Uses - Special Uses require approval of a quasi-judicial Special Use Permit. Such permits shall be issued by the City Council in accordance with the criteria, standards, and procedures established under this article. The City Council shall not grant a special use permit unless the use is expressly permitted as a special use in the zoning ordinance for the zoning district(s) of the property subject to the permit request.

900.1 Purpose –

To ascertain that certain designated uses have met specific conditions set forth by this Ordinance and that such uses:

900.11 Are not detrimental to the public health or general welfare;

900.12 Are appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal and similar services; and

900.13 Will not violate neighborhood character and not adversely affect surround land uses.

900.2 ~~Criteria and Standards for Conditional~~ Special Use Permits

~~The Planning Board shall not recommend and the City Council shall not grant a request for a conditional use permit, unless the use is expressly permitted as a conditional use in the zoning ordinance. Furthermore, no conditional use shall be recommended by the Planning Board and/or approved by the City Council unless the Board and Council shall find:~~

The City Council shall grant the special use permit upon finding that the application, or the application with conditions, meets of all of the following standards, in accordance with the procedures for quasi-judicial decisions in Article XIII, Division 4 of this ordinance:

900.21 The proposed ~~conditional~~ special use will comply with all height, yard, lot and area requirements and other regulations for the district in which it is located unless otherwise specified.

900.22 All driveways will be designed with respect to such matters as proper ingress and egress for automobiles in order to minimize traffic congestion and increase pedestrian safety and conveniences.

900.23 Off-street parking will be provided in compliance with Section 1000 and off-street loading will be provided in compliance with Section 1001 of this Ordinance.

900.24 The establishment of the ~~conditional~~-special use will not hinder the normal and orderly development and improvement of surrounding property for uses already permitted in the district.

900.25 Any required screening and landscaping will be designed or planted with full consideration of the effectiveness of individual plant types, dimensions, and characteristics in minimizing the noise, glare, visual impacts and other economic effects on adjoining properties.

900.26 Any permitted signs and proposed exterior lighting will be designed to reduce glare and to mitigate any adverse effects of sign size and height; so as to make the signs aesthetically pleasing and compatible with adjoining properties.

900.27 The exterior architectural appearance and functional plan of any proposed building or structure will not vary greatly from any buildings or structures already constructed or in the course of construction in the immediate vicinity or from the character of the applicable district, so as to cause a substantial depreciation in the property values of the immediate vicinity.

900.28 The type, size, hours of operations, location of the use upon the site, and intensity of the proposed ~~conditional~~-or-special use will not be harmful or annoying to surrounding properties.

900.3 Application for ~~Conditional~~-Special Use: Planning Board review

Applications for special use permits may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for a special use permit for such development as is authorized by the easement. It is recommended that prior to filing an application for a ~~Conditional~~-Special Use Permit that the applicant consult with the Planning Department to ascertain that the proposed use is permitted in the zone it is intended to be located in, and to be informed of all regulations and requirements affecting uses, and what information is required to be submitted with the application. An application for a ~~Conditional~~-Special Use Permit shall be submitted to the Planning Department by the Friday falling at least twenty (20) days prior to the regularly scheduled meeting of the Planning Board and shall include the following:

900.31 Site Plan (See Section 1302);

900.32 Any additional information required by this ordinance or by the Planning Department related to the development, operation, or performance standards of any proposed use; and

900.33 Payment of a fee as set forth by City Council to defray administration and publication expenses.

The Planning Department ~~will~~must forward such application and additional information to the Planning Board for their review and send mailed notice of the meeting as provided in Sec. 1310(1). Mailed notice must include a statement that the meeting is a preliminary forum, which will be followed by an evidentiary hearing as provided in Sec. 900.4.

The Planning Board provides a preliminary forum for review of special use permits. The Planning Board may hear citizen comments related to the permits, request that the applicant provide additional information to the City Council (such a request shall not be binding on the applicant), conduct informal preliminary discussion of the application, and make recommendations for revisions or conditions. Such recommendations should be based on goals and policies outlined in the Comprehensive Plan and other planning documents. No part of the forum or recommendation may be used as a basis for a decision by the City Council; however, the Planning Board's recommendations will be forwarded to the City Council along with other administrative materials pursuant to standard quasi-judicial procedures.

The Planning Board shall forward its recommendation on the application to the City Council within 45 days of the Board's first review of application. Upon an affirmative vote of the majority of the Planning Board to forward the recommendations to Council, or after 45 days have passed without a recommendation from the Planning Board, the planning department will set a date for an evidentiary hearing before the City Council and cause notice to be served and posted as provided under Article XIII, Division 3 of zoning ordinance. ~~The Planning Board shall also call for and set the date of a public hearing during which the City Council shall receive public comments on the application.~~

900.4 City Council Actions

The City Council must follow the procedures outlined in Article XIII, Division 3 for quasi-judicial decisions when deciding on special use permits, and may vote to approve, approve with conditions, or deny the special use permit application. Reasonable and appropriate conditions and safeguards may be imposed upon special use permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the city does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the local government, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. ~~may recommend and/or designate such conditions, in addition to and in connection with all other requirements for a Conditional Use Permit that will, in the City Council's opinion:~~

~~900.41 Assure that the proposed use and its location will be harmonious with the area in which it is proposed to be located and with the spirit of this Ordinance; and~~

~~900.42 Insure that the proposed use will not be detrimental to surrounding environment and property values.~~

~~All such additional requirements shall be entered into the minutes of the meeting at which the permit is granted and said conditions, along with the findings of fact under 900.2, shall also appear on the Conditional Special Use Permit. The Special Use Permit shall contain a signature block for the applicant to sign acknowledging consent to the conditions imposed. The permit shall not be considered in full force and effect until it is signed by the Mayor/Mayor Pro Tempore, the City Clerk and the applicant, and recorded with the register of deeds. All specific conditions shall pertain to the property for which the permit was granted and shall be binding on the original applicants and their heirs, successors, and assignees. Only after approval of the Conditional Use Permit by the Council shall the Building Inspector issue any necessary building permits. If the Planning Board recommends the disapproval of the Conditional Use Permit, and the City Council denies the permit, both shall enter the reasons for their action in the minutes of the meeting at which the action is taken.~~

~~No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority. When deciding conditional use permits, the city council or planning board shall follow quasi-judicial procedures.~~

900.5- Modification of Plans

(1) Minor Modifications. Subsequent development applications may incorporate minor changes from the development defined by the Special Use Permit approval, without the need to amend the Special Use Permit, where the Planning Director determines that the changes:

- (A) Continue to comply with this Ordinance or any other local development regulation; and
- (B) Are necessary to comply with conditions of approval; or
- (C) Are necessary to comply with a development regulation or accommodate a physical site constraint that was not known at the preliminary site design phase and would not significantly alter the development's general function, form, intensity, character, demand on public facilities, impact on adjacent properties, or other characteristic from that indicated by the Special Use Permit approval.

(2) Major Modifications/Permit Amendments. Any requests for changes or modifications to the development defined by the Special Use Permit that do not meet the standards for minor modifications above shall constitute a major change requiring an amendment to the permit.

Amendments for major modifications shall follow the same process for approval as the original Special Use Permit. In any case, the following changes from the Special Use Permit approval shall always constitute a major change:

- (A) A change in a condition of approval;
- (B) A change in uses permitted or the density of overall development.
- (C) A change greater than 20 percent in the ratio of gross floor area devoted to residential vs. non-residential uses in a mixed-use development; and
- (D) An increase greater than ten percent in the amount of land devoted to nonresidential uses.

(3) *Determination to be made in writing.* Requests for minor modifications may be made through a subsequent development application, or the applicant may request a stand-alone determination and approval from the Planning Director on a proposed modification prior to making application for a subsequent development approval (e.g. a plat, a zoning permit). The determination shall be made in writing, and may be provided to the applicant in print or electronic form.

State Law reference – G.S. 160D-705(c)

~~Where plans are submitted and approved as part of the application for a Conditional Use Permit, modifications of the original plans may be recommended by the Planning Board and authorized by the City Council after subsequent review by both bodies.~~

900.6 Appeals

All quasi-judicial decisions are subject to judicial review in the nature of certiorari, as outlined in Sec. 1402 and G.S. 160D-1402. No appeal may be taken to the Board of Adjustment from the action of the City Council in granting or denying a Conditional Use Permit. Any such action by the City Council shall be considered as the equivalent of action on a proposed zoning amendment and shall be reviewable only in the same manner as action on a proposed zoning amendment.

900.7 ~~Sanctions~~ Revocation of Permit

Failure to comply with the plans approved by the City Council or with any other conditions imposed upon the ~~Conditional~~ Special Use Permit by the Council, shall be treated as a zoning violation subject to enforcement pursuant to Sec. 1307 of this ordinance. Failure to abate the violation may result in the revocation of the special use permit, in addition to the penalties for non-compliance provided in Sec. 1-15 of the City's Code of Ordinances. Revocation of a special use permit must follow the same process for the initial approval, and may be initiated by planning department staff only when the property is in violation of the permit. ~~shall result in the permit becoming immediately void and of no effect. No building permit for further construction, nor Certificate of Occupancy under this Conditional Use Permit shall be issued, and all completed buildings or structures shall be regarded as nonconforming uses.~~

900.8 Expiration of Permits

Special Use Permits are valid for a period of 24 months from the date of issuance of the permit. If development has not substantially commenced within this time frame, as defined in Sec. 1505 of this ordinance, the Special Use Permit shall become null and void. Prior to expiration of the permit, the permit holder may petition the city for an extension, following the same process for the initial approval. When considering a request for an extension, the Council shall follow the standards in Sec. 1501(d) in determining whether or not to grant the extension. An extension may be granted for any period of time not to exceed 3 years. In no instance shall an extension be granted that would extend approval past 5 years from the date of initial approval of the permit. A review before the City Council shall be required after a twenty four (24) month period from the date of issuance of a Conditional Use Permit. If after said twenty four (24) month period construction has not begun or the permit has not been extended by the City Council, the Conditional Use Permit shall become null and void.

901 Manufactured Home Park (Also see Section 900)

901.1 Purpose - To establish additional review guidelines for Manufactured Home Parks as ~~Conditional-Special~~ Special Uses, and to assure that such Manufactured Home Parks will meet certain specifications and will provide pleasant living conditions for residents while protecting adjacent property.

901.33 The City of Lenoir, in conjunction with the Caldwell County Environmental Health Department, are hereby authorized and directed to make annual inspections to determine satisfactory and continued compliance with this ordinance. It shall be the duty of the owners or occupants of manufactured home parks to give these agencies free access to such premises at reasonable times for the purpose of inspection.

909 Administration, Enforcement, and Re-Application Process for Manufactured Home Parks.

909.1 All Manufactured Home Parks that are required to re-apply for an Annual Operating License due to loss of such a license from violations of this Ordinance shall hereafter be re-established as ~~Conditional-Special~~ Special Uses, and shall follow the same approval process for ~~Conditional-Special~~ Special Use Permits as prescribed by this Ordinance, and shall meet all of the design criteria established above. Prior to the re-establishment of a Manufactured Home Park, a ~~Conditional-Special~~ Special Use Permit application shall be filed with the Planning Department along with a site plan. ~~All applications and plans shall be submitted by the Friday falling at least fifteen (15) days prior to the regularly scheduled meeting of the Lenoir Planning Board, and shall consist of fifteen (15) copies and shall be in keeping with the requirements of this ordinance.~~

909.4 Issuance of ~~Conditional or~~ Special Use Permit and Annual Operating License

909.41 ~~After receiving approval of the park plan by the Lenoir City Council, the Planning Department shall issue a Conditional Use Permit.~~ After approval of the Special Use Permit by the City Council, the applicant must then apply for a Zoning Permit to execute the park plan, and for an Annual Operating License prior to offering any lot or home for lease. Zoning permits are also required for each manufactured home placed in the park, but will not be issued for any park that doesn't have a valid operating license. The intent of this the Special Use permit is to enable the execution of the park plan and shall not be construed to entitle the recipient to offer spaces for rent or lease, or to operate a manufactured home park as defined in this ordinance, unless and until all the approved park plan is fully executed and an operating license is issued by the Planning Department.

910 Communication Towers

It is the intent of this Ordinance to allow communication towers for mobile telephone services and other radio and television information services, while minimizing adverse visual and operational effects of towers through careful siting, design, and screening; to avoid potential damage to adjacent properties through proper setbacks; and to maximize the use of communication towers and existing structures to reduce the number of towers necessary to provide for the communication needs of Lenoir and surrounding areas. Wherever a communication tower is permitted as a Special Use (see Article VI Permitted Use Chart), the following application requirements and review standards shall apply in addition to those specified in Sec. 900 for all Special Uses.

Communication towers shall be a ~~conditional special~~ use in all zoning districts except the B-5, B-6 and B-7 zoning districts, and shall be subject to approval by the Lenoir City Council, ~~following review and recommendation by the Lenoir Planning Board, provided that the structure adheres to all of the following conditions in addition to those specified by Section 900 (Conditional Uses) of this Ordinance.~~

910.1 Communication towers shall at all times comply with Federal Communications Commission (FCC) standards for radio frequency emissions.

910.2 Prior to the issuance of a ~~Conditional~~ Special Use Permit, the applicant shall be required to provide certificates of insurance demonstrating it has a minimum of \$1,000,000 in general

liability insurance covering any liability arising out of its construction or operation of the communication facility. The applicant shall be required to maintain such coverage in full force and effect until such time as all above-ground portions of the facility have been removed and all other conditions of its Maintenance & Removal Agreement have been satisfied.

910.4 An application for a ~~Conditional~~Special Use Permit shall be accompanied by a copy of an executed lease requiring the applicant to remove all above-ground portions of communication towers no later than ninety (90) days after cessation of operations. In addition, each applicant for a communication tower shall execute a facility maintenance/removal agreement prior to issuance of the ~~Conditional~~Special Use Permit. Said agreement shall bind the applicant and the applicant's successors-in-interest to properly maintain the exterior appearance of and ultimately remove the facility in compliance with the provisions of this Ordinance and any conditions of approval. It shall further bind them to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the City for all costs incurred to perform any work required of the applicant by the agreement that the applicant fails to perform. Such costs shall include, but not be limited to, administrative and job supervision costs. It shall also specifically authorize the City and/or its agents to enter onto the property and undertake said work so long as the City has first provided the applicant the following written notices at the applicant's last known address:

910.7 An applicant for a ~~Conditional~~Special Use Permit for a communication tower that includes a new or additional tower or increase in tower height, shall be required to post a \$10,000 cash bond, or other security satisfactory to the City, to secure costs of removing all above ground portions of a communication tower (not including any part of the foundation) in the event the applicant shall fail to do so within ninety (90) days of cessation of operation of the facility. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of its Maintenance/Removal Agreement have been satisfied.

910.17 Modifications to existing communication towers that are otherwise consistent with this ordinance and do not substantially change existing towers shall be allowed to be permitted administratively without requiring additional review as a ~~Conditional Special~~ Use when the ~~modifications~~ Planning Director finds that the modifications:

- A. Do not increase the height of the tower by more than 10 percent;
- B. Will not extend more than 20 ft. from the tower;
- C. Will add no more than one equipment shelter or four equipment cabinets; ~~and~~
- D. Will not involve excavation outside the tower site or existing utility or access easements; and
- E. Do not exceed the maximum permitted height of 165 ft. for communication towers

Modifications that do not meet the above standards may be allowed, but require review and approval as a ~~Conditional Special~~ Use and must meet all standards for such uses.

913.3 Permitted Use; Application and Fees

- (1) Permitted Use: Collocation of a Small Wireless Facility or a new or modified Utility Pole or Wireless Support Structure for the collocation of a Small Wireless Facility, that meet the height requirements of § ~~160A-400.55(e)(2)~~ 160D-936(b), shall be classified as permitted uses and subject only to administrative review under Section 913.4 if they are collocated (i) in a City right-of-way, within any zoning district or (ii) outside of City rights-of-way, on property zoned other than as single-family residential property.
- (2) Permit Required. No Person shall place or collocate a Small Wireless Facility in the public rights-of-way, without first filing the appropriate Application and obtaining a Permit therefore, except as otherwise provided in this Chapter.
- (3) Permit Application. Applications for Permits filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the City. The Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or

confidential information as "proprietary" or "confidential," by clearly marking each page of such materials accordingly.

- (4) Application Requirements. Applications shall be made by the Wireless Provider or its duly authorized representative and shall contain the following:

5. A general description of the proposed work and the purposes and intent of the Small Wireless Facility, provided that, per N.C.G.S. § ~~160A-400.54~~ (d)(2)160D-935(d)(2), a Wireless Provider shall not be required to provide more information to obtain a Permit than communications service providers that are not Wireless Providers and provided, furthermore, that, pursuant to § ~~160A-400.52(e)~~ 160D-933(b), with respect to an Application for the placement or construction of a new Wireless Support Structure or the substantial modification of an existing Wireless Support Structure, a Wireless Provider shall not be required to provide information pertaining to the Wireless Provider's designed service, customer demand for its service, the specific need for the Wireless Support Structure, including whether the Wireless Support Structure is intended to add additional wireless coverage or capacity, the quality of the Wireless Provider's service to or from a particular site or area, or any proprietary, confidential, or other business information to justify the need for the Wireless Support Structure, including propagation maps and telecommunications traffic studies. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.

913.4 Administrative Review and Approval Process. This Section applies to applications for Permits that meet the requirements specified in Subsection 3(A).

- (a) Review for completeness. An Application subject to this Administrative Review section shall be deemed complete, unless the City provides notice, in writing, to the Applicant within thirty (30) days of submission or within some other mutually agreed-upon timeframe. The notice shall identify the deficiencies in the Application which, if cured, would make the application complete. The Application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.
- (b) Applications. Applicants who/which intend to submit application with more than ten (10) proposed location sites shall be required to schedule and attend a pre-application conference with staff from the City's Public Works Department to discuss the application prior to its submission.
- (c) Time Limits for Review of Completed Applications. An Application for a collocation, which is neither an eligible facilities request, per subsection 913.4 (e), below, nor the installation of a new Wireless Support Structure, Utility Pole, or City-Owned Pole, and is subject to this Administrative Review section shall be processed on a non-discriminatory basis and shall be deemed approved if the City fails to approve or deny the Application within forty-five (45) days from the time the Application is deemed complete or, alternatively, within some other mutually agreed-upon timeframe, to which the City and the Applicant agree.
- (d) Denial of Permit. The City may deny an Application for a Permit, subject to this Administrative Review section, on the basis that it does not meet: 1) the Applicable Codes or the City Code, 2) local code provisions or regulations that concern public safety, objective design standards for decorative Utility Poles, Utility Poles, generally, or reasonable and non-discriminatory stealth and concealment requirements, including screening and landscaping for ground-mounted equipment (ground cabinets, etc.), 3) public safety and reasonable spacing requirements for poles and ground-mounted

equipment in the right-of-way, or 4) local, state, and federal historic district laws and regulations in and/or enacted pursuant to or consistent with ~~Part 3C of Article 19 of Chapter 160A~~ Article 9, Part 4 of Chapter 160D of the North Carolina General Statutes, 47 U.S.C. 332(c)(7), 47 U.S.C. 1455(a), or the National Historic Preservation Act of 1966, 54 U.S.C. 300101 et seq. The City shall (i) document the basis for a denial, including the specific code provisions on which the denial was based, and (ii) send the documentation to the Applicant on or before the day the City denies an Application. The Applicant may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days of the denial, without paying an additional Application fee. The City shall approve, deny, or identify any continuing deficiencies in, the revised Application within thirty (30) days of the date on which the Application was re-submitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial. If the cited deficiencies are not cured within one-hundred-twenty (120) calendar days of the date of the City's written notice to the Applicant, thereof, the Application shall automatically be deemed withdrawn on the one-hundred-twentieth (120th) calendar day.

- (e) Review of Eligible Facilities Requests. Notwithstanding any other provision of this Chapter, the City shall approve and may not deny qualifying applications for eligible facilities requests, which meet the requirements of federal and state law, within sixty (60) days from the date of the Application's submission or forty-five (45) days from the date the Application is deemed complete, whichever comes first, or, alternatively, within some other mutually-agreed time frame, to which the City and the Applicant agree. The City shall process and review all qualifying eligible facilities requests according to the requirements and procedures established in 47 CFR 1.40001(c) and N.C.G.S. § ~~160A-400.53~~ 160D-934.

ARTICLE X. - OFF-STREET PARKING AND LOADING REQUIREMENTS

1000.7.2 Elimination of Storage Trailers

Within the O & I, B-1, B-2, and B-3,~~and B-4~~ zoning districts, transport trailers, cargo trailers, storage trailers, manufactured homes, mobile storage units and similar vehicles used primarily as signs or storage, are abandoned or otherwise located on-site during the majority of any calendar month (hereinafter referred to as "storage units"), shall be removed from these zoning districts within 36 months following adoption of this ordinance.

A. Location in front yards:

Storage units located in a front yard shall be removed within 6 months following adoption of this ordinance.

B. Location in side yards:

Storage units located in side yards shall maintain a minimum setback of 15 feet from adjacent property, and shall be completely screened from view from any public street within 6 months following the adoption of this ordinance. Screening shall be by means of a wall or fence constructed of masonry materials or treated lumber. Such walls or fences shall comply with applicable building codes.

C. Location in rear yards:

Storage units located in rear yards shall maintain a minimum setback of 15 feet from adjacent property lines, and shall be completely screened from view from any public street within 6 months following adoption of this ordinance. Screening shall be by means of a wall or fence constructed of masonry materials or treated lumber or by location behind a building such that the storage unit is not within view from a public street. Such walls or fences shall comply with applicable building codes.

D. A maximum of one (1) completely screened or hidden storage unit shall be permitted to remain in a side or rear yard provided that it was located on the lot on the adoption date of this ordinance, as determined by an inventory prepared by the Planning Department. All other storage units shall be removed from the lot within 36 months following adoption of this ordinance. No additional storage units shall be permitted on any lot in the O&I, B-1, B-2, and B-3,~~and B-4~~ zoning districts. No new certificates of occupancy,

zoning permits, or privilege licenses resulting from a change in property ownership shall be issued for any lot harboring a storage unit until it is removed from the property.

E. The provisions of this Section shall not apply to the following:

1. Vehicles used primarily for transportation which are licensed, roadworthy, and located off-premises during the majority of any calendar month;
2. Industrial uses located in the zoning districts listed above;
3. Transport trailers which are rotated at least every three months to replenish stock of unprocessed agricultural products. A maximum of two (2) such units shall be used by any business for this purpose.

ARTICLE XI. – SIGN REGULATIONS

1105 Sign Definitions - If questions arise related to the interpretation of any of the following definitions, or the classification of a proposed sign in accordance with the following definitions, the City of Lenoir Illustrated Sign Type Design Manual, as may be amended from time to time, is hereby incorporated by reference and shall be used to clarify the intent of the definitions.

Non-Residential Zoning District. Any of the following districts: Residential-Commercial (R-C), Office and Intuitional (O&I), Neighborhood Business (B-1), General Business (B-2), ~~Limited Business (B-4)~~, Neighborhood Mixed-Use (B-5), ~~Exclusive~~ Transitional Business (B-6), ~~Planned~~ Highway Business (B-7), Light Industrial (I-1), and Heavy Industrial (I-2).

1107.3 Uniform Sign Plan Required - A uniform sign plan shall be required for all developments subject to the design requirements of Section 714 of the Zoning Ordinance, and may be required as a condition of approval for any ~~conditional~~ special use permit or conditional zoning request. Uniform sign plans must include an illustrated site plan of all signage, including but not limited to on-site directional/way-finding signs, identification/entrance signs, traffic regulation signage and all tenant signs for the project.

1108 Signs In Residential Districts - In residential zoning districts (R-R, R-20, R-15, R-12, R-9, and R-6), signs must conform to the following:

- (a) On individual lots in residential zoning districts, including detached, semi-detached, and townhome lots, individual signs are limited to 3 sq. ft. with a maximum of 9 square ft. of total sign area permitted per road frontage, per lot. This sign area allowance includes but is not limited to: home occupation signs, lawn signs, real estate signs, contractor signs, and non-commercial signs. Signs may be freestanding, mounted to a permanent building structure or displayed in a window and may be permanent or temporary. These signs do not require a zoning permit.
- (b) Major subdivisions, planned unit developments, multi-family developments, and non-residential ~~conditional-special~~ uses with an approved ~~conditional-special~~ use permit located within residential zoning districts are permitted one monument sign not to exceed 32 sq. ft. in area and 6 ft. in height for each separate street entrance (for major subdivisions) or street frontage (for single development sites). Individual principal buildings are also allowed 8 sq. ft. of wall signage. All signs permitted by this subsection require approval of a uniform sign plan and a zoning permit.
- (c) Electronic Message Boards and internal illumination of signs are prohibited in residential districts.

Figure 1109: Permanent Building-Mounted Sign Regulations by District		
X = Permitted Blank = Prohibited	Maximum Sign Copy Area of Sign Faces per building ¹	Illumination Allowed (see Sec. 1107.6)
O&I (Office/Institutional District)	100 sq. ft. or 5% of the wall surface areas facing a public street or parking lot, whichever is greater	• Internal and External
B-1 (Neighborhood Business District)	32 sq. ft.	• Internal and External light sources
<u>R-C, B-2 & B-7</u> (<u>Residential-Commercial</u> , General/Highway Business Districts)	100 sq. ft. or 5% of the wall surface areas facing a public street or parking lot, whichever is greater	• Internal and External • Electronic Message Boards ²

Figure 1109: Permanent Building-Mounted Sign Regulations by District

X = Permitted Blank = Prohibited	Maximum Sign Copy Area of Sign Faces per building ¹	Illumination Allowed (see Sec. 1107.6)
B-5 (Neighborhood Mixed-Use District)	16 sq. ft. per façade facing a public street or parking lot.	• External spot lighting only; maximum 150 watts per side.
~~B-4 & B-6~~ (~~Limited/Exclusive~~ <u>Transitional</u> Business Districts)	32 sq. ft. per façade facing a public street or parking lot.	• Internal and External
I-1 and I-2 (Industrial Districts)	100 sq. ft. or 5% of the wall surface areas facing a public street or parking lot, whichever is greater	• Internal and External • Electronic Message Boards ²
1. Where multiple tenants occupy the same building, wall signage shall be allotted to each business through a Uniform Sign Plan, based on the overall signage available for the development. When no Uniform Sign Plan has been approved, signage will be allotted to each business based upon the percentage of the exterior wall surface area of the space occupied by the business.		
2. Electronic Message Boards must be oriented to face away from any adjacent residential property.		

Figure 1110: Ground-Mounted Sign Regulations by District

X = Permitted Blank = Prohibited	Maximum Sign Copy Area (per street frontage, per sign)	Illumination Allowed (see Sec. 1107.6)	Pylon Signs (max height 15 ft.)	Monument Signs (max. height 8 ft.)	Arm Signs (max. height 6 ft.)	Post and Panel Signs (max. height 6 ft.)	Incidental Signs (max. height 3 ft.)
O&I (Office/Institutional District)	32 sq. ft.	Internal and External		X	X	X	X

Figure 1110: Ground-Mounted Sign Regulations by District

X = Permitted Blank = Prohibited	Maximum Sign Copy Area (per street frontage, per sign)	Illumination Allowed (see Sec. 1107.6)	Pylon Signs (max height 15 ft.)	Monument Signs (max. height 8 ft.)	Arm Signs (max. height 6 ft.)	Post and Panel Signs (max. height 6 ft.)	Incidental Signs (max. height 3 ft.)
B-1 (Neighborhood Business)	32 sq. ft.	Internal and External		X	X	X	X
<u>R-C, B-2 & B-7</u> (<u>Residential-</u> <u>Commercial,</u> General/Highway Business Districts)	Arterial frontage - 50 sq. ft. ¹ All other road frontage - 32 sq. ft.	Internal and External Electronic Message Boards ²	X	X			X
B-5 (Neighborhood Mixed- Use District)	16 sq. ft.	Internal and External		X	X	X	X
~~B-4 & B-6~~ (~~Limited/Exclusive~~ <u>Transitional</u> Business Districts)	Arterial frontage - 50 sq. ft. ¹ All other road frontage - 32 sq. ft.	Internal and External Electronic Message Boards ²		X	X	X	X

Figure 1110: Ground-Mounted Sign Regulations by District

X = Permitted Blank = Prohibited	Maximum Sign Copy Area (per street frontage, per sign)	Illumination Allowed (see Sec. 1107.6)	Pylon Signs (max height 15 ft.)	Monument Signs (max. height 8 ft.)	Arm Signs (max. height 6 ft.)	Post and Panel Signs (max. height 6 ft.)	Incidental Signs (max. height 3 ft.)
I-1 and I-2 (Industrial Districts)	Arterial frontage - 50 sq. ft. ¹ All other road frontage - 32 sq. ft.	Internal and External Electronic Message Boards ²	X	X		X	X
1. Parcels or development sites with arterial frontage with at least 50,000 sq. ft. gross floor area are allowed one sq. ft. of sign area for each linear foot of lot frontage, with a maximum of 200 sq. ft.							
2. Electronic Message Boards must be oriented to face away from any adjacent residential property.							

ARTICLE XIII. - ADMINISTRATION

DIVISION 1 GENERALLY

1300 Administration and Enforcement - Pursuant to ~~G. S. 160A~~G.S. 160D as amended, and for purposes of administering and enforcing this ordinance, the Planning Department is hereby assigned the duty and authority to administer and enforce the provisions of this ordinance. Administrative staff may inspect work undertaken pursuant to a development approval to assure

that the work is being done in accordance with this ordinance and of the terms of the approval, and may perform inspections for general code compliance and enforcement unrelated to a development approval. In exercising this power, staff are authorized to enter any premises within the city's planning jurisdiction at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

~~If the Planning Department shall find that any provisions of this Ordinance are being violated, the person or persons responsible for such violations shall be notified in writing indicating the nature of the violation and ordering the action necessary to correct it.~~

~~Planning Department shall order discontinuance of uses of land and buildings in violation of this ordinance, removal of illegal buildings or structures, or discontinuance of illegal work being done; or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.~~

1300.1 Determinations and Interpretation; Notice

Any staff member of the Planning Department, as authorized by the Director, may make determinations and interpretations on the provisions in this ordinance while engaged in the administration and enforcement of the ordinance. Whenever a property owner or authorized agent disagrees with the interpretation or application of this ordinance made by planning department staff, or otherwise requests that a written determination be made, the Planning Director shall make the final determination and provide written notice of the determination to the property owner and to the party who sought the determination, if different from the owner, pursuant to G.S. 160D-403(b). It shall be the responsibility of the land owner, applicant, or person who sought the determination to post notice of the zoning decision pursuant to G.S. 160D-403(b), and the posting of such notice is not required.

1301 Building-Zoning Permit Required ~~--~~ No person shall commence or proceed with any development activity regulated by this ordinance without first securing a zoning permit from the Lenoir Planning Department and, if applicable, a building permit from Caldwell County Building Inspections. Applications for zoning permits may be made by the landowner, a lessee

or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for a permit for such development as is authorized by the easement. Development approvals shall be in writing and may contain a provision requiring that the development apply with all applicable State and local laws. The approval may be issued in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. Zoning Permits shall expire 12 months from the date of approval if development activity has not substantially commenced (see Sec. 1505), except where a longer timeframe is prescribed by this ordinance. No building, sign, or other structure shall be erected, moved added to or structurally altered without a permit, issued by the Building Inspector. No building permit shall be issued by said Building Inspector except in conformity with the provisions of this ordinance.

1302 Application for ~~Building~~ Zoning Permit - All applications shall be accompanied by a site plan.

1302.1 Single and Two-family Dwellings - The required site plan shall contain, but not be limited to the following:

Scale

Owner's Name

Property line

Location of existing structures and driveways

Location of proposed structures and driveways

DIVISION 2 ENFORCEMENT

1305 Complaints Regarding Violations - Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written or verbal complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Planning Department. A representative of the Planning Department shall record properly such complaint, immediately investigate, and take action thereon as provided by this ordinance.

1307 Notification, Abatement, and Penalties for Violation - Upon the determination that any provision of ~~this ordinance~~the city's adopted development regulations is being violated, or work or activity has been undertaken in violation of the terms of a development approval, the Zoning Inspector shall issue a written notice of violation. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. ~~send a written notice by registered mail to the person(s) responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Person(s) responsible for violations may include the owner and/or the occupant of the land on which the violation exists.~~ Such notice shall provide time period for abatement, and shall state the penalties for noncompliance provided in section 1-15 of the City of Lenoir Code. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.

State Law reference: similar provisions G.S. 160D-404(a).

1307.1 Stop Work Orders - Whenever any work or activity subject to regulation pursuant to this ordinance or other applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, the Zoning Inspector may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local

government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

State Law reference: similar provisions G.S. 160D-404(b).

1307.2 Revocation of Permits – The Planning Director may revoke a zoning permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any zoning permit mistakenly issued in violation of applicable State or local law may also be revoked.

1308 Appeals from the Decision of the Zoning Inspector — Appeals of administrative decisions made by staff under this ordinance, including but not limited to determinations made pursuant to Sec. 1300.1, permits issued or denied pursuant to Sec. 1301, notices of violations and orders of abatement issued pursuant to 1307, stop work orders issued pursuant to 1307.1, revocation of permits pursuant to 1307.2, and determinations related to vesting, application completeness, and substantially commencing development, pursuant to Article XV, shall be heard by the Board of Adjustment.

- (1) *Standing.* Any person who has standing under G.S. 160D-1402(c) or the city council may appeal an administrative decision to the board.
- (2) *Notice of Appeal.* An appeal is taken by filing a notice of appeal with the Planning Director. The notice of appeal must state the grounds for the appeal.
- (3) *Time to Appeal.* The owner or applicant has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary,

notice given pursuant to G.S. 160D-403(b) by first class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(4) *Record of Decision.* - The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(5) *Stays.* - An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

(6) *Appearance of New Officials.* The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

(7) Powers and Duties of the Board. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. The board shall follow the quasi-judicial process outlined in Secs. 1309-1318 of this Article when hearing appeals under this Section.

State Law reference – G.S. 160D-405 and 160D-406(e)

~~An appeal from any decision or order of the Zoning Inspector may be taken by any person aggrieved thereby. Any appeal from the Inspector shall be taken within ten days from the rendering of the decision or notice of the order, and shall be taken by filing a notice of appeal with the Planning Department which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Zoning Inspector shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the Zoning Inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the Zoning Inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing of the Board, unless the Inspector certifies to the Board, after the notice of appeal is filed with him, that by reason of the facts stated in the certificate, a copy of which shall be furnished the appellant, a suspension of his requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the Inspector, by the Board, or by a court of record upon petition made pursuant to G.S. 160A-446(f) and the provisions of this article.~~

DIVISION 3: QUASI-JUDICIAL PROCEDURES

State Law reference – G.S. 160D-406.

1309 Process Required. All boards making quasi-judicial decisions shall follow quasi-judicial procedures, which include an evidentiary hearing. The Board of Adjustment shall follow quasi-judicial procedures in determining appeals of administrative decisions and variances. The Historic Preservation Commission shall follow quasi-judicial procedures in issuing Certificates of Appropriateness. The City Council shall follow quasi-judicial procedures in issuing Special Use Permits.

1310 Notice of Hearing.

- (1) *Mailed Notice.* Notice of evidentiary hearings conducted pursuant to this Part shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the City's code of ordinances. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other right-of-way or easement. In cases where the abutting properties are substandard due to not meeting the minimum lot size or width requirements, the notice shall also include the next abutting property(s). In cases where the applicant or owner of the subject property also owns or has an interest in the abutting properties, the City may send notice to the next abutting property, such that the intent of this Section to provide written notice to abutting land owners is met. In the absence of evidence to the contrary, the City shall rely on the owner of record and address listed on the Caldwell County tax listing. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing.
- (2) *Posted Notice.* At least 10 days, but not more than 25 days, prior to the date of the hearing, the City shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- (3) *Continued Hearings.* The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

1311 Administrative Materials. The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

1312 Presentation of Evidence. The applicant, the city, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

1313 Oaths. The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

1314 Subpoenas. The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall

issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

1315 Appeals in the Nature of Certiorari. When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).

1316 Voting. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

1317 Decisions. The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or upon recordation of the order or permit with the Register of Deeds, when required by this Ordinance. The decision of the board shall be delivered within a reasonable time by personal

delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

1318 Judicial Review. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

Secs. 1319-1330 Reserved.

DIVISION 4: VARIANCES

1331 Requests for Variances

A person wishing to request a variance shall file an application with the Planning Department on the Friday falling at least twenty (20) days prior to the meeting at which it is to be reviewed and shall pay a fee, as set forth by City Council to defray administration and noticing expenses. Applications for variances may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for a variance for such development as is authorized by the easement.

1332 Standards for Variance Approval; Findings of Fact

When unnecessary hardships would result from carrying out the strict letter of a zoning or subdivision regulation, the board of adjustment shall, by a 4/5 majority vote, vary any of the provisions of the regulation upon the adoption of findings of fact showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the regulation.

It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances,

as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodate under the Federal Fair Housing Act for a person with a person with a disability.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

1333 Procedure for Quasi-Judicial Hearing

The Board of Adjustment shall hold a quasi-judicial hearing in accordance with the procedures in Secs. 1309-1318 prior to taking action on any variance request.

Secs. 1334-1399 Reserved.

~~1309 Establishment of a Board of Adjustment~~ ~~A Board of Adjustment is hereby established. Said Board shall consist of six (6) regular members and two (2) alternate members. Five (5) regular members shall be citizens of the City of Lenoir, appointed by the Mayor, and approved by the City Council. One regular member shall be a citizen of the City of Lenoir's extra-territorial planning jurisdiction (ETJ), nominated by the Mayor and City Council, and approved by the Caldwell County Board of Commissioners. Two alternate members shall be members of the City of Lenoir or its ETJ, and approved by the appropriate body of government.~~

~~1310 Proceedings of the Board of Adjustment~~ ~~The Board of Adjustment shall select a chairman and vice chairman from its members who shall serve for one (1) year or until reelected or until their successors are elected. The Board of Adjustment shall appoint a secretary. The Board of Adjustment shall adopt rules and bylaws in accordance with the provisions of this ordinance and of Article 19, Chapter 160A of the General Statutes of North Carolina.~~

~~1311 Public Meetings~~—All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, an indication of such fact; and the final disposition of appeals shall be made by recorded resolution indicating the reasons of the board; therefore, all of which shall be a public record. No final action shall be taken on any matter unless a quorum is present. A quorum shall consist of seven (7) members.

~~1312 Powers and Duties of the Board of Adjustment~~—The Board of Adjustment shall have the following powers:

~~1312.1 Variance—~~

~~To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, substantial justice done. The existence of nonconforming uses of neighboring land, building, or structures in the same district or of permitted nonconforming uses in other districts shall not constitute a reason for the requested variance. Such variance may be granted in such individual cases of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist:~~

~~1312.11 There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.~~

~~1312.12 Literal interpretation of the ordinance would provide for no reasonable use of or return from the property.~~

~~1312.13 A literal interpretation of the provision of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which property is located.~~

~~1312.14 The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.~~

~~1312.15 The variance requested is the minimum variance that will make possible the use of the land, building, or structure.~~

~~1312.16 The variance is not a request to permit a use of land, building, or structure which is not permitted in the district involved.~~

~~**1312.2 Appeals**—To hear appeals concerning interpretation of administration of this ordinance by the Planning Department. Such appeals may be taken by any person aggrieved or by an officer, department or board of the City. An appeal stays all proceedings in furtherance of the action appealed from, unless the Planning Department certifies to the Board of Adjustment, after notice of appeal shall have been filed, that, by reason of fact stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by restraining order, which may be granted by a court of record on application and on notice to the Planning Department.~~

~~In exercising the above powers, the Board of Adjustment may reverse or affirm wholly or in part, or may modify the order, requirements, decision or determination and to the end, shall have all powers of the Planning Department and may direct the issuance of a permit. The Board of Adjustment, in the execution of the duties for which it is appointed, may subpoena witnesses and in case of contempt may certify such fact to the Superior Court in and for the County of Caldwell.~~

~~1312.3 Temporary Manufactured Homes—To authorize the location of a manufactured home on the same lot as a single family residence for a period of six (6) months (renewable) so that adequate care may be available for persons with a medical hardship. The applicant must provide the following items to the Board of Adjustment along with the application:~~

~~1312.31 Site plan showing the dimensions of the lot location of the single family residence, proposed location of the manufactured home and path to be used to move manufactured home.~~

~~1312.32 Doctor's statement that the individual can be cared for at home, but is in need for supervision and that the proposed caretaker is capable of performing the needed tasks.~~

~~1312.33 Statement from the applicant acknowledging that (1) permission to located the manufactured home is specific to the named individual, (2) location of the manufactured home is temporary and must be renewed each six months and (3) occupancy of the manufactured home is permitted due to a medical hardship and shall not become a rental situation.~~

~~The lot proposed for location of the manufactured home must be of adequate size to enable installation and removal of the manufactured home within the lot and to permit a distance of~~

~~thirty (30) feet between the house on the lot (or on any other adjacent lot), a distance of twenty-five (25) feet from the manufactured home to the rear lot line, and side yards as required by the district.~~

~~1313 Application Procedure—Person wishing to request a variance or to take an appeal shall file an application with the Board of Adjustment on the Friday falling at least twenty (20) days prior to the meeting at which it is to be reviewed and shall pay a fee, as set forth by City Council to defray administration and publication expenses.~~

~~The Board of Adjustment shall hold a public hearing regarding any application pursuant to Section 1312 of this ordinance. The public hearing shall be advertised at least once in a newspaper of general circulation in the area commencing not less than seven (7) days prior to the hearing.~~

~~(Ord. of 6-16-2015, § 4)~~

~~1314 Decision of the Board of Adjustment—The concurring vote of five (5) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Planning Department or to decide in favor of the applicant on any matter upon which it is required to pass under Section 1313 of this ordinance. No more than six (6) members and/or alternate members shall vote on any matter. All regular members of the Board of Adjustment present shall vote and such alternate members as are needed to make up a six (6) member Board. Any additional alternate members present may participate in the discussion but shall not vote on the matter. The Board of Adjustment shall keep minutes of its proceedings, showing the voice of each member upon each question, or if absent or failing to vote, indication of such fact; and shall keep records of its examinations and other official actions; all of which shall be immediately filed in the office of the Planning Department and shall be a public record. On all appeals, applications for a variance and matters brought before the Board of Adjustment, the Board shall inform the applicant in writing of its decision.~~

~~For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.~~

~~(Ord. of 1-16-2006)~~

~~1315 Appeals from Decision of Board of Adjustment - Any person who may have a substantial interest in any decision of the Board of Adjustment may appeal any decision made under the powers conferred by Section 1313 of this ordinance to the Superior Court in and for the County of Caldwell by filing with the clerk of such court a petition in writing setting forth plainly, duly and distinctly wherein such decision is contrary to law. Such appeal will be filed within thirty (30) days after the decision of the Board of Adjustment.~~

ARTICLE XIV. - AMENDMENTS

1400 Authority - This ordinance, including the Official Zoning Map/Atlas of Lenoir, North Carolina, may be amended from time to time by the City Council as herein specified, following a review by and a written recommendation from the Planning Board, ~~but no amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the Planning Board for review and recommendation.~~ The Planning Board shall have thirty (30) days from the regularly scheduled meeting after having received ~~such request~~ an amendment request, within which to submit its recommendation.

1401 Requirements for Change - When public necessity, convenience, general welfare, or good zoning practice justify such action, and after the required review and report by the Planning Board, the City Council may undertake the necessary steps to amend the Zoning Ordinance and the Official Zoning Map. Action of the City Council in their consideration of proposed amendments to the Zoning Ordinance shall be by a simple majority vote, ~~of four of the seven members.~~

1402 Procedure for Amendment - Requests to amend the Zoning Ordinance shall be processed in accordance with the following requirements:

1402.1 Initiation of Amendments - A proposed amendment to the Zoning Ordinance may be initiated by the City Council, the Planning Board, Planning department staff, or by application filed with the Planning ~~Board-department~~ by the owner or owners of the property or by the holder of an option to the property proposed to be changed or by citizens with a critical interest in the property. No amendment to zoning regulations or a zoning

map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the City.

1402.2 Application Procedure - An application for a proposed text or map amendment ~~to the Zoning Ordinance~~ may be obtained from the Planning Department. Completed forms, plus any additional information the applicant feels to be pertinent, ~~will~~ must be filed with the Planning Department who shall forward such to the Planning Board. Any communication purporting to be an application for an amendment shall be regarded as mere notice to seek relief until it is made in the form required. A pre-application meeting with Planning Department staff is recommended, but not required, prior to submittal of an amendment request.

Applications for amendments must be submitted in proper form, by the Friday falling at least twenty (20) days prior to a Planning Board meeting in order to be heard at that meeting and a fee paid as set forth by City Council to defray administration and publication expenses.

1402.21 Community Meeting – The Planning Director may require the applicant to hold a community meeting or otherwise notify and communicate with neighbors and impacted citizens, prior to taking a proposed amendment to the Planning Board. When such a requirement is made, the Planning Department shall provide names and addresses as appropriate to facilitate noticing for the meeting, but mailed notice shall be the responsibility of the applicant. When requiring a community meeting, the Planning Director shall take into consideration the scale of the proposed amendment, the differences in intensity between the existing and proposed districts or regulation, the consistency of a proposed amendment with the future land use map, the history of the property, and the characteristics of the surrounding properties. Generally, community meetings will only be required for amendments with (1) the potential to substantially alter or depart from the community’s reasonable expectations for development under the existing zoning classification; and (2) the impacts are anticipated to occur within or immediately adjacent to an established residential area or are anticipated to create a demand for additional services or infrastructure improvements that haven’t already been identified in the City’s Capital Improvements Plan, Comprehensive Plan or other small-area plan.

1402.22 A community meeting shall not be required for the following types of amendments:

- (1) Requests to down-zone property
- (2) Requests amending less than 20,000 sq. ft.
- (3) Requests for re-zonings on properties specifically identified for the proposed zoning on the Future Land Use map

1402.3 Planning Board Review — The Planning Board shall review all proposed amendments and shall advise and comment on whether the proposed action is consistent with the City’s adopted Comprehensive Plan and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the Planning Board. A comment by the Planning Board that an amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the City Council. For map amendments that qualify as “large scale re-zonings” under G.S. 160D-602(b), the Planning Board statement describing plan consistency may address the overall re-zoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made. All papers and other data submitted by the applicant on behalf of the amendment request shall be transmitted to the Planning Board.

~~The Planning Board shall review and prepare a report, including its recommendation on the proposed amendment for transmittal to the City Council.~~ The Planning Board shall also call for and set the date of a public legislative hearing during which the City Council shall receive public comments on the application.

Meetings of the Planning Board shall be open to the public, and mailed notice shall be sent in accordance with G.S. 160D-602 to the owner of the affected parcel(s) and to the owners of all abutting properties. For the purposes of this section, properties are “abutting” even if separated by a street, railroad, or other right-of-way or easement. In cases where the abutting properties are substandard due to not meeting the minimum lot size or width requirements,

the notice shall also include the next abutting property(s). In cases where the applicant or owner of the subject property also owns or has an interest in the abutting properties, the City may send notice to the next abutting property, such that the intent of this Section to provide written notice to abutting land owners is met. ~~first class mail notice shall be given in accordance with N.C.G.S. 160A-384(a). At a meeting, any party may appear in person, or by agent, or by attorney. No member of the Planning Board shall participate in a matter in which he has any pecuniary or special interest.~~

~~The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the City Council.~~

1402.4 Public Legislative Hearing by the City Council - Before enacting an amendment to this ordinance or amending the Official Zoning Map, the City Council shall hold a public legislative hearing thereon. Notice of the hearing must be published in accordance with G.S. 160D-601(a), and mailed noticed shall be shall be sent in accordance with G.S. 160D-602(a) to the owner of the affected parcel(s) and to the owners of all abutting properties, except that large-scale zoning map amendments may be noticed through publication instead of mailed noticed in accordance with G.S. 160D-602(b). For the purposes of this section, properties are "abutting" even if separated by a street, railroad, or other right-of-way or easement. In cases where the abutting properties are substandard due to not meeting the minimum lot size or width requirements, the notice shall also include the next abutting property(s). In cases where the applicant or owner of the subject property also owns or has an interest in the abutting properties, the City may send notice to the next abutting property, such that the intent of this Section to provide written notice to abutting land owners is met. ~~Notice shall be given in accordance with N.C.G.S. 160A-364 and 160A-384.~~

When a zoning map amendment is proposed, the City shall prominently post a notice of the public legislative hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way, in accordance with G.S. 160D-602(c). When multiple parcels are

included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the City shall post sufficient notices to provide reasonable notice to interested persons.

1402.5 Decision of the City Council — When adopting or rejecting any zoning text or map amendment, the City Council shall approve a brief statement describing whether its action is consistent or inconsistent with the City’s adopted Comprehensive Plan, in accordance with G.S. 160D-605(a). When adopting or rejecting any petition for a zoning map amendment, the City Council shall also approve a statement analyzing the reasonableness of the proposed rezoning. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a “large-scale rezoning” under G.S. 160D-602(b), the City Council statement on reasonableness may address the overall rezoning. The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

State Law Reference: G.S. 160D-605

~~A favorable vote of the majority of the City Council shall be sufficient to amend the zoning ordinance unless a protest petition has been filed with the City Clerk in accordance with N.C.G.S. 160A-385. To qualify as a protest under this section, the petition must be signed by the owners of either:~~

~~Twenty percent (20%) or more of the area included in the proposed change, or~~

~~Five percent (5%) of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned.~~

~~A street right of way shall not be considered in computing the 100-foot buffer as long as that street right of way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured~~

~~from the property line of that parcel. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the 'owners' of potentially qualifying areas. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) special use district, (ii) conditional use district, or (iii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special use district, conditional use district, or conditional district.~~

1402.6 Changes in the Zoning Map and Future Land Use Map - Following the final action by the City Council, any necessary changes shall be made in the Zoning Map/Atlas. A written record of the type and date of such change shall be maintained by the ~~City Clerk~~ Planning Department. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required.

1402.7 Pending Amendments - Upon the receipt of a request for amending the Zoning Ordinance Text or Zoning Map/Atlas as initiated under Section 1402 of the Lenoir Zoning Ordinance and upon the calling for a public hearing by the Lenoir City Council, the Planning Department or representative thereof shall then "stay" the issuance of any permits for land use or construction that would render said land use or construction nonconforming by any means (i.e., yard requirements, land usage, etc.), should said amendment be confirmed by the City Council at a duly advertised public hearing.

1403 Resubmission of Rezoning Applications - When an application for a change in zoning classification for a piece of property has been acted upon by the City Council, a new application for rezoning of the same property or any part thereof shall not be accepted within a period of one (1) year from the date of the submission of the application.

However, if the property owner (or his designated agent) was not the party originally submitting the application for rezoning, the restrictions on the submission of a new application shall not apply.

ARTICLE XV. - VESTED RIGHTS AND PERMIT CHOICE

1500. Site-Specific Vesting Plans

- (a) An approved site-specific vesting plan precludes any zoning action by the city, which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific vesting plan and in accordance with applicable limitations and exceptions.
- (b) The development approvals listed below are determined by the City of Lenoir to qualify as site-specific vesting plans.
 - i. Conditional District zoning plan
 - ii. Special Use Permits
 - iii. Variances
 - iv. Subdivision Plats
 - v. Planned Unit Developments
 - vi. Development Plan submitted pursuant to Sec. 714, for a development not already subject to vesting under i-iv above
- (c) A vested right established pursuant to this ordinance shall run for a period of 24 months from the effective date of the approval of the underlying development application.

1501 Process for submittal, approval, and amendment of a site-specific vesting plan.

- (a) Each site-specific vesting plan shall include the information required by the city for the underlying type of development plan.
- (b) Each site-specific vesting plan shall provide the notice and hearing required for the underlying type of development plan.
- (c) An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the local government in the same manner as required for the underlying type of development plan.
- (d) Upon following the same process as required for the original approval, the decision-making board or official may extend the vesting of a site-specific vesting plan up to three years (with total length of vesting not to exceed five years) upon finding that:
 - i. The permit has not yet expired;

- ii. Conditions have not changed so substantially as to warrant a new application; and
- iii. The extension is warranted in light of all other relevant circumstances—including, but not limited to the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations.

1502 Limits of site-specific vesting plans

- (a) Nothing in this ordinance shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the zoning ordinance. The development remains subject to subsequent review and approvals to ensure compliance with the terms and conditions of the original approval as provided for in the original approval or by applicable regulations.
- (b) The establishment of a vested right pursuant to this ordinance shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the city, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.
- (c) New and amended zoning regulations that would be applicable to certain property but for the establishment of a vested right shall become effective upon the expiration or termination of the vested rights period provided for in this ordinance.
- (d) Upon issuance of a building permit, the expiration provisions of G.S. § 160D-1111 and 160D1115 apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.
- ~~(a)~~ Any vested rights for a site-specific vesting plan are subject to the exceptions specified at G.S. § 160D -108.1.

1503 Multi-Phase Development

- (a) A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. Such site plan approval shall follow the

process established for the type of development permit needed for the multi-phase development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

(b) A multi-phase development for the purposes of this Section is defined as a development containing 25 acres or more that is both of the following:

- a. Submitted for development permit approval to occur in more than one phase.
- b. Subject to a master development plan with committed elements showing the type and intensity of use of each phase

1504 Application Completeness Review

(a) Completeness Determination. Applicants shall submit applications to the Planning Department in accordance with the applicable published schedule of submittal dates. Until an application is determined to be complete in accordance with the requirements in this ordinance for the type of development application, an application has not been submitted. On receiving a development application, the Planning Director shall, within 10 business days, determine whether the application is complete or incomplete. A complete application is one that:

- a. Contains all information and materials required by city's ordinance for submittal of the applicable type of application, and in sufficient detail, format, and readability for city staff to evaluate the application for compliance with applicable review standards; and
- b. Is accompanied by the fee established for the applicable type of application.

(b) Application Incomplete

- a. On determining that the application is incomplete, the Planning Director shall, as appropriate, provide the applicant written notice of the submittal deficiencies. The applicant may correct the deficiencies and resubmit the application for a completeness review.
- b. If the applicant fails to resubmit an application within 30 calendar days after being first notified of submittal deficiencies, the application submittal shall be considered abandoned. If an applicant submits a request in writing to the Planning Department

within 15 calendar days of the application abandonment date, 50 percent of the application fee paid for the withdrawn application shall be refunded.

(c) Application Complete. - On determining that the application is complete, the Planning Director shall:

- a. Accept the application as submitted in accordance with the procedures and standards of this Ordinance in effect at the time of the submittal; and
- b. Provide the applicant written notice of application submittal acceptance.

1505 Substantially Commencing Development

(a) A valid development approval shall not expire if work on the project has substantially commenced within the initial validity period. Substantial commencement of work shall be determined by the Planning Director based on any of the following:

- a. The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis and not discontinued it for more than thirty (30) days;
- b. The development has installed substantial on-site infrastructure; or
- c. The development has received and maintained a valid building permit for the construction and approval of a building foundation.

(b) Even if work has substantially commenced, a development approval still expires if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, as calculated and tolled pursuant to N.C.G.S. 160D-108.

1506 Permit Choice

(a) If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application.

(b) If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required

to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit.

- (c) If a permit application is placed on hold at the request of the applicant for a period of six consecutive months or more, or the applicant fails to respond to comments or provide additional information reasonably requested by the local or State government for a period of six consecutive months or more, the application review shall be discontinued and the development regulations in effect at the time permit processing is resumed shall be applied to the application.

State Law reference – G.S. 143-755 and G.S. 160D-108(b)

~~1500 VESTED RIGHTS PROVISIONS~~

~~1500.1 Purpose~~

~~The purpose of this chapter is to implement the provisions of G.S. 160A-385.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan.~~

~~1500.2 Definitions~~

~~As used in this chapter, the following terms shall have the meaning indicated:~~

~~*Approval authority*—The Lenoir City Council as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.~~

~~*Site specific development plan*—A plan of land development submitted to the City of Lenoir for purposes of obtaining one of the following zoning or land use permits or approvals:~~

- ~~1.—Planned Unit Development~~
- ~~2.—Subdivision Plat~~
- ~~3.—Preliminary or general development Plan (Commercial or Industrial)~~
- ~~4.—Conditional or Special Use Permit~~
- ~~5.—Land Use density (Residential)~~

~~The above listed uses shall be considered for vested rights under the Lenoir Zoning Ordinance for all zoning classifications within the City of Lenoir's Zoning jurisdiction.~~

~~Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.~~

~~*Zoning vested right*—A right pursuant to G.S. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.~~

~~1500.3 Establishment of a Zoning Vested Right~~

~~(a) A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the City of Lenoir, as applicable, of a site specific development plan, following notice and public hearing.~~

~~(b) The approving authority may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.~~

~~(c) Notwithstanding subsections (a) and (b), approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.~~

~~(d) A site development plan shall be deemed approved upon the effective date of the approval authority action or ordinance relating thereto.~~

~~(e) The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type of intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the city, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this chapter.~~

~~(f) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original and owner shall be entitled to exercise such right while applicable.~~

~~1500.4 Approval Procedures and Approval Authority~~

- ~~(a) Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the designated approval authority for the specific type of zoning or land use permit or approval for which application is made.~~
- ~~(b) In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application, on a form to be provided by the City, that a zoning vested right is being sought.~~
- ~~(c) Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under G.S. 160A-385.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (Date)."~~
- ~~(d) Following approval or conditional approval of a site specific development plan, nothing in this chapter shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.~~
- ~~(e) Nothing in this chapter shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.~~

1500.5 Duration

- ~~(a) A zoning right that has been vested as provided in this chapter shall remain vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to subsection (b). This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.~~
- ~~(b) Notwithstanding the provisions of subsection (a), the approval authority may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site specific development plan is approved.~~

~~(e) Upon issuance of a building permit, the expiration provisions of G.S.160A-418 and the revocation provisions of G.S. 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.~~

~~1500.6 Termination~~

~~A zoning right that has been vested as provided in this chapter shall terminate:~~

- ~~(a) at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;~~
- ~~(b) with the written consent of the affected landowner;~~
- ~~(c) upon findings by the City Council, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;~~
- ~~(d) upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning marketing, legal, and other consultants fees incurred after approval by the city, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;~~
- ~~(e) upon findings by the City of Lenoir, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan; or~~
- ~~(f) upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.~~

~~1500.7 Voluntary Annexation~~

~~A petition for annexation filed with the city under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G.S. 160A-385.1 or G.S. 153A-344.1. A statement that declares that no zoning vested right has been established under G.S. 160A-385.1 or G.S. 153A-344.1, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.~~

~~1500.8~~ Limitations

~~Nothing in this chapter is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 160A-385.1.~~

~~1500.9~~ Repealer

~~In the event that G.S. 160A-385.1 is repealed, this ordinance shall be deemed repealed and the provisions hereof no longer effective.~~

~~1500.10~~ Effective Date

~~This chapter shall be effective October 1, 1991 and shall only apply to site specific development plans approved on or after October 1, 1991.~~

~~1500.11~~ APPENDIX

~~CERTIFICATION THAT A STATUTORY ZONING VESTED RIGHT IS BEING SOUGHT PURSUANT TO G.S. 160A-385.1~~

~~As applicant for a (identify land use approval or permit that is being sought), I hereby certify that I am also seeking to acquire a vested right pursuant to G.S. 160A-385.1 of the City of Lenoir's Zoning Ordinance.~~

~~If the city Code provides that the approval authority for the type of land use approval or permit for which I am applying is a board, committee or administrative official other than the Lenoir City Council, I understand and agree that my application will be considered and acted on by the Lenoir City Council, following notice and a public hearing.~~

<u> </u> <u> </u> Date	<u> </u> <u> </u> Applicant
--	---

-

~~1500.12~~ Vested Rights Site Specific Plan Review

City of Lenoir Planning Department

Date:

-
GENERAL INFORMATION

Township:	Tax Map:	Block:	Lot:
Zoning Classification:		Rezoning Necessary:	
Street Address:			
Owner:			
Mailing Address:			
Land Area:			
Existing Land Use:		Proposed:	
Surrounding Land Use:			
North:			
South:			

~~East:~~

~~West:~~

BUILDING & SITE INFORMATION

~~F.A.R.:~~

~~Building Height:~~

~~Number of Floors:~~

~~Setbacks Required:~~

~~F:~~

~~S:~~

~~S:~~

~~R:~~

~~Setbacks Shown:~~

~~F:~~

~~S:~~

~~S:~~

~~R:~~

~~Parking Spaces Required:~~

~~Shown:~~

~~Parking Lot Landscaping Required:~~

~~Trees:~~

~~Shrubs:~~

~~Parking Lot Landscaping Shown:~~

~~Trees:~~

~~Shrubs:~~

~~Street Yard Landscaping Required:~~

~~Trees:~~

~~Shrubs:~~

~~Street Yard Landscaping Shown:~~

~~Trees:~~

~~Shrubs:~~

~~Buffer Shown Adequate:~~

Signage:

Floodplain:

Floodway:

-

1500.12

~~Vested Rights Site Specific Plan Review~~

City of Lenoir Planning Department

-

TRANSPORTATION

Street Frontage:	Amount:
Street Type:	# of Lanes:
Right of way:	# Entrances:
Distance to Thoroughfare Street:	
Sidewalks:	

-

UTILITIES

Water Line Size:	Adequate:
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~~Sewer Line Size:~~	~~Adequate:~~
~~Storm Drainage Adequate:~~	
~~Disposal Containers:~~	~~Screened:~~
~~Outdoor Lighting:~~	

-

~~ADDITIONAL COMMENTS~~

-

~~Signature of Applicant:~~
~~Address:~~
~~Phone:~~
~~Date:~~

-

~~Review and Recommendation of the Planning Board:~~
~~Chairman of Planning Board:~~

Approval by City Council on:
Vested Rights date to expire:

ARTICLE XVII. - HISTORIC PRESERVATION

1700 Purpose.

Whereas the historical heritage of the City of Lenoir is a valued and important part of the general welfare; and whereas the conservation and preservation of that heritage, through the documentation and regulation of historic districts or landmarks, or through the acquisition of historic properties, stabilizes and increases property values, and pursuant to North Carolina General Statute (N.C.G.S. ~~160A-400.1~~160D-940 to ~~400.14~~) this ordinance is enacted in order to:

A. Safeguard the heritage of Lenoir by preserving districts and landmarks therein that embody important elements of its culture, history, architectural history, or prehistory; and

B. Promote the use and conservation of such districts and landmarks for the education, pleasure, and enrichment of the residents of the City of Lenoir and of the State as a whole.

1701 Historic Preservation Commission

1701.1 Creation and Appointment - The Lenoir Planning Board is hereby created as the Lenoir Historic Preservation Commission, pursuant to general statute ~~160A-400.7~~160D-303(b), hereinafter referred to as the "Commission."

1703.3 Procedure for Designation

B. Pursuant to G.S. ~~160A-400.6~~160D-946(3), as amended, the designation report shall be submitted to the North Carolina Department of Cultural Resources, Division of Archives and History, or its successor agency, which, acting through the State Historic Preservation Officer, shall review it and provide written comments and recommendations to the Commission regarding the substance and effect of the proposed designation. Failure of the Department to respond within thirty (30) days following its receipt of the report shall constitute approval of the report by the Department and relieve the City of Lenoir of all responsibility to consider the Department's comments or recommendations concerning the report.

1705 Certificates of Appropriateness

1705.1 Certificate of Appropriateness Required

1705.2 Review ~~Guidelines~~Standards. Prior to the designation of any historic landmark or district, the Commission shall prepare and adopt ~~guidelines-standards~~ not inconsistent with ~~G.S. 160A-400.1-400.14~~G.S. Chapter 160D, Article 9, Part 4 for constructing, altering, restoring, rehabilitating, relocating, removing, or demolishing of property designated as historic, which guidelines shall ensure, insofar as possible, that changes in designated landmarks or properties located within designated districts shall be in harmony with the reasons for designation.

1705.6 Applications and Required Procedures

- D. Before considering an application for a Certificate, the Commission shall ~~notify by mail the owners of any adjacent property. Such notices are convenience of property owners and occupants and no defect or omission therein shall impair the validity of issuing a Certificate or of any subsequent action.~~ provide notice of the evidentiary hearing as required under Sec. 1310 of this ordinance.
- E. When considering an application for a Certificate, the Commission shall ~~give the applicant and owners of any property likely to be materially affected by the application an opportunity to be heard.~~ hold an evidentiary hearing consistent with the procedures established for all quasi-judicial decisions by Article XII, Division 3 of this ordinance.
- F. When considering the application, the Commission shall apply the review ~~guidelines~~ standards required by Section 1705.2 and shall, in approving, approving with conditions, disapproving, or deferring an application, make findings of fact, indicating the extent to which the application is or is not in compliance with review criteria, and shall cause these findings of facts to be entered into the minutes of its meetings. The minutes shall also contain a summary of any citation to evidence, testimony, studies, or other authority upon which the Commission based its decision.

- J. ~~—All decisions of the commission in granting or denying a certificate of appropriateness may be appealed to the Lenoir City Council in the nature of certiorari. Appeals must be filed with the Lenoir City Clerk within 30 days of the receipt of written notice of the decision. To the extent applicable, the provisions of G.S. 160D-1402 apply to appeals in the nature of certiorari to the city council. An appeal of a final action by the Commission may be made to the Lenoir City Council. Written notice of intent to appeal must be sent to the Commission, postmarked within twenty (20) calendar days following the Commission's decision. Appeals must be filed with the Lenoir City Clerk within sixty (60) calendar days following the Commission's decision and shall be in the nature~~

~~of certiorari. A decision by Lenoir City Council may be appealed to the superior court of Caldwell County.~~

~~K.J.~~ A Certificate shall be required for designated landmarks or buildings, structures, sites, areas, or objects within designated districts which are owned by the State of North Carolina or any of its agencies, political subdivisions, or instrumentalities, subject to the regulations of this ordinance and in accordance with North Carolina General Statute ~~160A-400.9(f)~~ 160D-947(f).

SECTION 9. SEVERABILITY.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 10. CODIFICATION.

The City Clerk shall cause the Code of Ordinances of Lenoir, North Carolina to be amended as provided by this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

SECTION 11. EFFECTIVE DATE.

This ordinance takes effect upon adoption.

DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Lenoir, North Carolina, by the City Clerk of the City of Lenoir, North Carolina, this _____ day of _____ and this _____ day of _____, 2021.

DONE, THE PUBLIC HEARING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of the a majority of a quorum present of the City Council of the City of Lenoir, North Carolina, at a regular meeting, this _____ day of _____, 2021.

**BY THE MAYOR/MAYOR PRO TEMPORE OF THE CITY OF LENOIR, NORTH
CAROLINA:**

Mayor/Mayor Pro Tempore

**ATTEST, BY THE CLERK OF THE CITY COUNCIL OF THE CITY OF LENOIR,
NORTH CAROLINA:**

City Clerk

****[Remainder of page intentionally left blank.]****

Location of Chapter 160D Provisions in Prior Statutes

Updated to August 17, 2020

CHAPTER 160D	CHAPTER 153A	CHAPTER 160A
<i>ARTICLE 1</i> <i>General Provisions</i>		
§ 160D-101. Application.	--	--
§ 160D-102. Definitions.	153A-344.1(b) 153A-349.2	160A-1(3) 160A-385(a)(2) 160A-385.1(b) 160A-393(a) 160A-400.9 160A-400.21 160A-442
§ 160D-103. Unified development ordinance.	153A-322(d)	160A-363(d)
§ 160D-104. Development approvals run with the land.	--	--
§ 160D-105. Maps.	--	--
§ 160D-106. Refund of illegal fees.	153A-324(b)	160A-363(e)
§ 160D-107. Moratoria.	153A-340(h)	160A-381(e)
§ 160D-108. Permit choice and vested rights.	153A-320.1 153A-344153A-344.1	160A-360.1 160A-385160A-385.1
§ 160D-108.1. Vested rights – Site specific vesting plans.	153A-344.1	160A-385.1
§ 160D-109. Conflicts of interest.	153A-340(g) 153A-355	160A-381(d) 160A-388(e) 160A-415
§ 160D-110. Chapter construction.	--	--
§ 160D-111. Effect on prior laws.	153A-2	160A-2 160A-5 160A-366
<i>ARTICLE 2</i> <i>Planning and Development Regulation Jurisdiction</i>		
§ 160D-201. Planning and development regulation jurisdiction.	153A-320	160A-360
§ 160D-202. Municipal extraterritorial jurisdiction.	--	160-360
§ 160D-203. Split jurisdiction.	--	--
§ 160D-204. Pending jurisdiction.	--	--
<i>ARTICLE 3</i> <i>Boards and Organizational Arrangements</i>		
§ 160D-301. Planning boards.	153A-361	160A-321
§ 160D-302. Boards of adjustment.	--	160A-388
§ 160D-303. Historic preservation commission.	--	160A-400.7
§ 160D-304. Appearance commission.	--	160A-451

§ 160D-305. Housing appeals board.	--	160A-446
§ 160D-306. Other advisory boards.	--	--
§ 160D-307. Extraterritorial representation on boards.	--	160A-362
§ 160D-308. Rules of procedure.	---	--
§ 160D-309. Oath of office.	--	--
§ 160D-310. Appointments to boards.	--	--
<i>ARTICLE 4</i> <i>Administration, Enforcement, and Appeals</i>		
§ 160D-401. Application.	--	--
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CITY OF LENOIR
COUNCIL ACTION FORM

I. Agenda Item:

Bid Award: Renovations/Upgrades to the Restroom Facility and the Large Deck that overlooks the Pond at T.H. Broyhill Walking Park.

II. Background Information:

The Restrooms and Deck Area are in need of repairs and upgrades to accommodate the patrons who use the park. This project is being funded by a generous \$100,000.00 Donation from the Broyhill Family Foundation, Inc. The bids below are for the restroom upgrades only and the remaining balance of the donation will be for materials for self-performed deck repair.

Bids: Precision Contracting Company	\$70,892.00
Brushy Mountain Builders	\$74,575.00
David E. Looper & Company	\$93,381.00

III. Staff Recommendation:

Staff recommends awarding the low bid to Precision Contracting Company in the amount of \$70,892.00

IV. Reviewed by:

City Attorney:

Finance Director:

Public Works/Public Utilities Director:

Planning Director:

Recreation Director: Kenny Story

2021 T.H. Broyhill Walking Park
City of Lenoir

[illegible]

Precision Contracting Co.
1761 Morris Creek Rd.
Granite Falls, NC 28630
Office (828) 759-3994 Mobile (828) 217-1879
Unlimited License #64428

To: Kenny Story
 Parks and Recreation Director/City of Lenoir

January 3, 2021

Shelia Brady
 Broyhill Foundation Administrator

Re: Renovation/Upgrades to Broyhill Walking Park
 Existing Toilet Building

Item: Construction Cost Proposals

Folks,
 See the following requested proposals:

1. See attached our prelim drawings for reference and scope of work.
2. All the existing exterior items on building will remain with only minor repairs. See new floor plan for location of new 3x7 metal exterior door to serve as access to new Storage Room, this door will match existing. Across the rear 25', we will install concrete curb approx. 8" wide, 12" tall on top existing concrete floor to prevent future water damage. We will replace approx. 24" bottom wood siding and trim on all 4 walls due to current water/age damage. We will repaint all the exterior building. Painting of building only, not Pergola Roof.
3. The interior including the concrete slab will be demolished and removed.
4. The new interior will include concrete slab sloped to new floor drains, new painted block walls, new acoustical tile ceilings with R16 insulation.
5. Each of 3 new toilets will have ADA std fixtures, see Triplett Plumbing quote for the scope of work.
6. The 3 new Toilet Rooms will have a specialty floor covering to be determined. Allowance for this item is \$3,000.00.
7. The Storage Room will have the relocated electrical panel, mop sink and space for other utilities.
8. Heating will be new electric recessed wall units similar to existing.
9. Electrical will include relocation of the existing service panel, re-connection to all existing service panel, re-connection to all existing fixtures to remain, all new LED light fixtures, 3 new LED fixtures in exterior entry ceiling, 4 new LED bulbs in 2 existing Gazebo Ceiling.
10. Removal of existing electric water coder. We will install new single foundation unit furnished by City.

11. All labor, equipment, taxes, clean-up, supervision and complete commercial insurance package.

Total Base Bid \$70,892.00

We will be glad to preform the work as cost plus 10% fee, have this amount a max. sum, give back owner all cost savings.

Option #1

See Triplett Option #2 for revised hw heaters, this will allow Mop Sink to have hot water.

Add Cost of \$922.00

Option #2

See Triplett Option #3 for all S.S. plumbing fixtures.

Add Cost of \$13,673.00

Option #3

Replace 60 existing 2x6x12 Pergola Ceiling Beams with pre-finished PVC beams.

Add Cost of \$11,624.00

Option #4

Replace existing Pergola beams with 2x6x12T wood that we will field stain and seal.

Add Cost of \$5,644.00

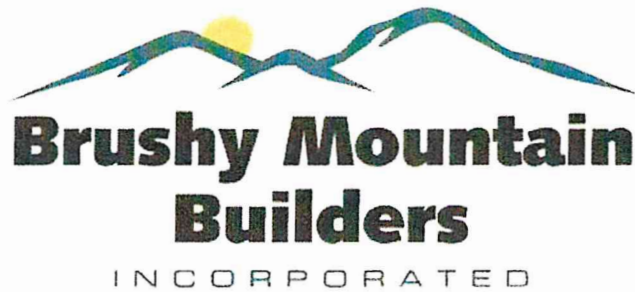
Per our meeting on 12-8-20 to review this proposal, we discussed that due to the nature of this project and the high probability of unexpected issues, that for budget planning we would recommend a contingency allowance of 15% total cost. We will only use this allowance item for approved extra change orders.

Thank you for the opportunity of this proposal.

David Gray



Adam Gray



January 5, 2021

Mr. Kenny Story

Parks & Rec. Director City of Lenoir

Reference: Upgrades to restrooms at Broyhill Walking Park

Mr. Story,

Brushy Mountain Builders, Inc. proposes the following for the Broyhill Walking Park Restroom Project:

- Exterior improvements consist of; New 3' by 7' exterior door to storage room, Install concrete curb along back to prevent water damage, replace rotted wood along the bottom of building, & painting of exterior.
- Remove & replace concrete slab with proper slopes to new drains, new painted block walls, & new ACT with R-16 insulation.
- Three new toilets with ADA fixtures.
- Relocate Electrical panel to storage room and mop sink.
- The new toilet rooms will have new specialty flooring. Allowance is \$3,000.00.
- Replace existing heaters with similar units.
- Replace all lighting with LED fixtures.
- Remove existing electric water heater and replace with new one provided by others.
- Final cleanup.

Total price for this scope of work is \$74,575.00.

Alternate #1 Hot water heater that will accommodate mop sink \$985.00.

Alternate #2 Provide Stainless Steel plumbing fixtures \$14,150.00

Alternate #3 Replace existing "Pergola" beams with pre finished PVC beams \$11,400.00

Alternate #4 Replace existing "Pergola" beams with treated 2 by 6's stain & seal \$5,250.00

If you have any questions or need additional information please feel free to contact me (828)217-2300 or jmoore@brushymountaininc.com.

Thank you,



John Moore

Brushy Mountain Builders, Inc.

3390 GAITHER WALKER CIRCLE • LENOIR, NC 28645 • PHONE: 828-758-5577 • FAX: 828-495-4003



January 8, 2021

Mr. Kenny Story
Lenoir Parks and Recreation
Lenoir, NC

RE: Renovations to existing Restroom Building

Mr. Story,

We are pleased to provide pricing for the Renovation and Modification to the existing Broyhill Walking Park Toilets. Our price includes the following:

General Scope:

- Project supervision and project management
- Tools and equipment
- Builders risk and permitting
- Add standing curb along rear elevation
- Repair siding affected by water damage only
- Exterior siding will be painted in its entirety
- Provide one new hollow metal frame and door for access to new storage area
- Interior demolition to include:
 - o Removal of existing separation walls, frames and doors
 - o Removal of existing fixtures
 - o Removal of existing concrete slab on grade
- Provide new under slab plumbing
- Provide new concrete slab on grade
- New separation walls will be CMU
- Finishes to include:
 - o Painted CMU Walls
 - o New acoustical ceilings with insulation overhead
 - o Floor finish assumed to be epoxy finished concrete
- Plumbing fixtures to include:
 - o One (1) mop sink
 - o Three (3) lavatories (standard ADA)
 - o Three (3) water closets (standard ADA)
- Electrical to include:
 - o Electrical panel relocation
 - o Electric unit heaters
 - o New LED light fixtures

Hickory Office:

PO Box 3224
320 15th Street SE
Hickory, NC 28603

828-324-1284
828-324-1289 (fax)
NC GC License
31511

Charleston Office:

2089 Wambaw
Creek
Road, Unit 2
Charleston, SC
29492

843-471-2742
828-471-2741 (fax)

Project Total \$93,381.00

Exclusions:

- Asbestos testing or abatement
- Any work beyond building foot print
- Bonding of any kind
- Toilet accessories and changing stations
- No work associated with pergola
- Contractor contingency

We appreciate this opportunity and would be happy to discuss any questions that you may have regarding this proposal.

Respectfully,

Dustin W. Davis

Dustin W. Davis – Preconstruction Service Manager
dustin@delcompany.com
828-270-6892 - Mobile

Board Re-Appointment List (these names were announced at the January 5 Council Meeting)**Lenoir Business Advisory Board****Tim Biddix****3-year term****Matt Underwood****3-year term****Planning Board****James Bradshaw****4-year term****Board Announcement (to be voted on at the February 2 Council Meeting)****Parks & Recreation Advisory Board****Tim Poarch****2-year term**