

## CHAPTER 10: GENERAL PROVISIONS

### Section

- 10.01 [Title of code](#)
- 10.02 [Interpretation](#)
- 10.03 [Application to future ordinances](#)
- 10.04 [Captions](#)
- 10.05 [Definitions](#)
- 10.06 [Rules of interpretation](#)
- 10.07 [Severability](#)
- 10.08 [Reference to other sections](#)
- 10.09 [Reference to offices](#)
- 10.10 [Errors and omissions](#)
- 10.11 [Official time](#)
- 10.12 [Reasonable time](#)
- 10.13 [Ordinances repealed](#)
- 10.14 [Ordinances unaffected](#)
- 10.15 [Effective date of ordinances](#)
- 10.16 [Repeal or modification of ordinance](#)
- 10.17 [Ordinances which amend or supplement code](#)
- 10.18 [Section histories; statutory references](#)
- 10.19 [Certain ordinances and resolutions not affected by code](#)
- 10.20 [Supplementation of code](#)
  
- 10.99 [General penalty](#)

### § 10.01 TITLE OF CODE.

This codification of ordinances by and for the county of Haywood shall be designated as the Code of Haywood County and may be so cited.

***Statutory reference:***

*For provisions authorizing county to adopt and issue a code of ordinances, see G.S. § 153A-49*

**§ 10.02 INTERPRETATION.**

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this code as those governing the interpretation of state law.

**§ 10.03 APPLICATION TO FUTURE ORDINANCES.**

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

**§ 10.04 CAPTIONS.**

Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

**§ 10.05 DEFINITIONS.**

(A) *General rule.* Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

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

***BOARD OF COUNTY COMMISSIONERS, BOARD OF COMMISSIONERS, or BOARD.*** The Board of Commissioners of Haywood County, North Carolina.

***CODE, THIS CODE, or THIS CODE OF ORDINANCES.*** This county code as modified by amendment, revision, and adoption of new titles, chapters, or sections.

***COUNTY.*** Haywood County, North Carolina.

***G.S.*** The General Statutes of North Carolina, as amended.

***JOINT AUTHORITY.*** All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

***MAY.*** The act referred to is permissive.

***MONTH.*** A calendar month.

**OATH.** An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words **SWEAR** and **SWORN** shall be equivalent to the words **AFFIRM** and **AFFIRMED**.

**OFFICER, OFFICE, EMPLOYEE, COMMISSION, or DEPARTMENT.** An officer, office, employee, commission, or department of this county unless the context clearly requires otherwise.

**PERSON.** Extends to and includes person, persons, firm, corporation, copartnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

**PRECEDING or FOLLOWING.** Next before or next after, respectively.

**SHALL.** The act referred to is mandatory.

**SIGNATURE or SUBSCRIPTION.** Includes a mark when the person cannot write.

**STATE.** The state of North Carolina.

**SUBCHAPTER.** A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have subchapters.

**WRITTEN.** Any representation of words, letters, or figures, whether by printing or otherwise.

**YEAR.** A calendar year, unless otherwise expressed; equivalent to the words **YEAR OF OUR LORD**.

#### **§ 10.06 RULES OF INTERPRETATION.**

The construction of all ordinances of this county shall be by the following rules, unless such construction is plainly repugnant to the intent of the Board of County Commissioners or of the context of the same ordinance:

(A) **AND** or **OR.** Either conjunction shall include the other as if written "and/or," if the sense requires it.

(B) *Acts by assistants.* When a statute or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, the requisition shall be satisfied by the performance of the act by an authorized agent or deputy.

(C) *Gender; singular and plural; tenses.* Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(D) *General term.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

#### **§ 10.07 SEVERABILITY.**

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

#### **§ 10.08 REFERENCE TO OTHER SECTIONS.**

Whenever in one section reference is made to another section hereof, the reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

#### **§ 10.09 REFERENCE TO OFFICES.**

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this county exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

#### **§ 10.10 ERRORS AND OMISSIONS.**

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express such intent, such spelling shall be corrected and such word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

**§ 10.11 OFFICIAL TIME.**

The official time, as established by applicable state/federal laws, shall be the official time within this county for the transaction of all county business.

**§ 10.12 REASONABLE TIME.**

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

(B) The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

**§ 10.13 ORDINANCES REPEALED.**

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

**§ 10.14 ORDINANCES UNAFFECTED.**

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

**§ 10.15 EFFECTIVE DATE OF ORDINANCES.**

All ordinances passed by the County Board of Commissioners requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided. Ordinances not requiring publication shall take effect from their passage, unless otherwise expressly provided.

**§ 10.16 REPEAL OR MODIFICATION OF ORDINANCE.**

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the due publication of the ordinance repealing or modifying it when publication is required to give effect thereto, unless otherwise expressly provided.

(B) No suit, proceedings, right, fine, forfeiture, or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in anyway be affected, released, or discharged, but may be prosecuted, enjoyed, and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause, or provision shall by itself be repealed, the repeal shall not be construed to revive the former ordinance, clause, or provision, unless it is expressly provided.

#### **§ 10.17 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.**

(A) If the County Board of Commissioners shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

(B) Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of the chapter or section. In addition to the indication thereof as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

#### **§ 10.18 SECTION HISTORIES; STATUTORY REFERENCES.**

(A) As histories for the code sections, the specific number and passage date of the original ordinance and the most recent three amending ordinances, if any, are listed following the text of the code section. Example: (Ord. passed 5-13-60; Am. Ord. passed 1-1-70; Am. Ord. passed 1-1-80; Am. Ord. passed 1-1-85)

(B) (1) A statutory cite included in the history indicates that the text of the section reads substantially the same as the statute. Example: (G.S. § 139.1 et seq.) (Ord. passed 1-17-80; Am. Ord. passed 1-1-85).

(2) A statutory cite set forth as a "statutory reference" following the text of the section indicates that the reader should refer to that statute for further information. Example:

##### **§ 39.01 PUBLIC RECORDS AVAILABLE.**

The county shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.

***Statutory reference:***

*For provisions concerning the inspection of public records, see G.S. §§ 139-1 et seq.*

**§ 10.19 CERTAIN ORDINANCES AND RESOLUTIONS 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 ordinances or resolutions, which are not included herein:

(1) Any ordinance or resolution promising or guaranteeing the payment of money for the county, or authorizing the issuance of any bonds of the county or any evidence of the county's indebtedness;

(2) Any appropriation ordinance or resolution or ordinance or resolution providing for the levy of taxes or for an annual budget, or prescribing salaries for county officers and employees;

(3) Any ordinance or resolution granting any franchise, permit, or other right;

(4) Any ordinance or resolution approving, authorizing, or otherwise relating to any contract, agreement, lease, deed, or other instrument;

(5) Any ordinance or resolution authorizing or otherwise relating to any public improvement project or work;

(6) Any ordinance or resolution zoning or rezoning specific property or amending the zoning map;

(7) Any temporary or special ordinance or resolution or ordinance or resolution of limited interest or transitory nature;

(B) And all such ordinances and resolutions are hereby recognized as continuing in full force and effect to the same extent as if set out at length herein.

***Statutory reference:***

*Authority to omit ordinances of the types enumerated above from the code, see G.S. § 153A-49*

**§ 10.20 SUPPLEMENTATION OF CODE.**

(A) By contract or by county personnel, supplements to this code shall be prepared and printed whenever authorized or directed by the Board of County Commissioners. A supplement to the code shall include all substantive permanent and general parts of ordinances passed by the Board of County Commissioners during the period covered by the supplement and all changes made thereby in the code. The pages of a supplement shall be so numbered that they will fit properly into the code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the code will be current through the date of the adoption of the latest ordinance included in the supplement.

(B) In preparing a supplement to this code, all portions of the code which have been repealed shall be excluded from the code by the omission thereof from reprinted pages.

(C) When preparing a supplement to this code, the codifier (meaning the person, agency or organization authorized to prepare the supplement [i.e., American Legal Publishing Corporation]) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivision;

(2) Provide appropriate catchlines, headings, and titles of sections and other subdivisions of the code printed in the supplement, and make changes in such catchlines, headings, and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this subchapter," "this division," and the like, as the case may be, or to "sections \_\_\_\_ through \_\_\_\_" (inserting section numbers to indicate the sections of the code which embody the substantive sections of the ordinance incorporated into the code); and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the code; but, in no case, shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code.

***Statutory reference:***

*Authority to maintain code by replacement pages, see G.S. § 153A-49*

**§ 10.99 GENERAL PENALTY.**

(A) ~~Whenever in this code or in any ordinance of the county an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this code of ordinances the doing of an act is required or the failure to do an act is declared to be unlawful or an offense or a misdemeanor, where no specific penalty is provided therefor, the violation of the provision of this code of ordinances or of any such ordinances shall be a Class 3 misdemeanor and shall be punished by a fine of not more than \$50 or by imprisonment for not more than 30 days for each separate violation. Each day any violation of this code or any ordinance shall continue shall constitute a separate offense, unless otherwise specified. Whenever an act or condition is made a criminal violation in these ordinances, the criminal statute (generally, N.C.G.S. § 14-4) will be recited in that Chapter or Section. Each day any violation of this code or any ordinance shall continue shall constitute a separate offense, unless otherwise specified.~~

(B) In addition to the provisions of division (A) of this section, any provision of this code or other ordinance of the county may be enforced by any one or more of the remedies authorized by G.S. § 153A-123.

**§ 10.100 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 10 originally adopted January 17, 1980, and all subsequent amendments, and shall be effective on and after January 3, 2022.

***Statutory reference:***

*For provisions authorizing county to punish ordinance violations as misdemeanors, see G.S. § 14-4(a)*

*For provisions concerning county enforcement of ordinances, see G.S. § 153A-123*

## CHAPTER 90: ADDRESSING AND ROAD NAMING

### Section

#### *Addressing*

- 90.01 [Definitions](#)
- 90.02 [Purpose](#)
- 90.03 [Authority](#)
- 90.04 [Duties of the Addressing Office](#)
- 90.05 [Jurisdiction](#)
- 90.06 [New address assignment](#)
- 90.07 [Display of address numbers](#)
- 90.08 [Enforcement](#)
- 90.09 [Legal provisions](#)

#### *Road Naming*

- 90.20 [Definitions](#)
- 90.21 [Purpose](#)
- 90.22 [Authority](#)
- 90.23 [Duties of the Addressing Office](#)
- 90.24 [Jurisdiction](#)
- 90.25 [Public Hearing required for naming or renaming roads](#)
- 90.26 [Road naming procedures for private roads](#)
- 90.27 [Notice of action for all roads](#)
- 90.28 [Mobile home parks, condominiums, planned unit developments, apartments, public housing developments, and travel trailer parks](#)
- 90.29 [Prohibited road names](#)
- 90.30 [Road signs](#)
- 90.31 [Amendments](#)
  
- 90.99 [Penalty](#)
  
- 90.100 [Effective Date and Revision of Original Ordinance](#)

*ADDRESSING***§ 90.01 DEFINITIONS.**

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

**ADDRESS COORDINATOR.** The official of the county charged with the administration of this subchapter, including any authorized agent(s) or delegate(s).

**BUILDING.** Any structure having a roof supported by columns or walls and intended for shelter, housing, or enclosure of persons, animals, chattels, or equipment. When separated by division walls from the ground up without openings, each portion of the building may be deemed a separate building. For the purpose of this subchapter, **BUILDING** may also include other manmade structures.

**DRIVEWAY.** Begins at the property line of a lot abutting a public road, private road, easement, or private right-of-way, and leads to a building, use, or structure on that lot. A **DRIVEWAY** only serves a single building, use, or structure.

**FRONTAGE UNIT.** A standard interval in feet used to assign consecutive property numbers on a street or road. The standard front unit adopted for use throughout the county is 5.28 feet. Even numbers shall always be on the right side and odd numbers on the left side of the street or road as numbers increase.

**PRIVATE ROAD.** A road not maintained by the State Department of Transportation which is not intended to become a public road but which shall be used for access to a particular site, group development, or business.

**PUBLIC ROAD.** Any road, street, highway, thoroughfare, or other way of passage that has been irrevocably dedicated to the public, or in regard to whether it is open for travel. This definition shall include any road located on a public right-of-way which either has been accepted for maintenance by the state or which has been dedicated for public travel by the recording of a plat of a subdivision with the County Register of Deeds Office.

**ROADWAY.** Any road, street, drive, land, cartway, tramway, easement, right-of-way, access area, thoroughfare, highway, boulevard, or any other corridor used for, or having the potential use as, a means of conveyance by a motor vehicle.

**ROAD ADDRESS.** The combination of numbers and road names assigned by the county which uniquely identifies a particular building or lot.  
(Ord. passed 2-10-94)

**§ 90.02 PURPOSE.**

The purpose of this subchapter is to provide a comprehensive and uniform system of permanent road addresses for all properties and buildings throughout the county in order to facilitate provision of adequate public safety and emergency response services. It is further designed to benefit the United States Postal Service, local business owners, and individual citizens by minimizing difficulty in locating properties and buildings.

(Ord. passed 2-10-94)

**§ 90.03 AUTHORITY.**

This subchapter is adopted under the authority and provisions of G.S. §§ 153A-121, 153A-238, and 153A-239.1, and local modifications thereto.

(Ord. passed 2-10-94)

**§ 90.04 DUTIES OF THE ADDRESSING OFFICE.**

Under the authority set forth in § 90.03, the County Addressing Office, hereafter referred to as the *ADDRESSING OFFICE*, shall be responsible for assigning all numbers for properties and buildings as well as compiling a database of addresses of each property and building. It shall also recommend change of existing addresses when necessary to meet specifications established by this subchapter. When each building has been assigned its respective address, the Addressing Office, in cooperation with the United States Postal Service, shall notify the owners, occupants, or person in charge of the affected building, by letter, advising of the new address.

(Ord. passed 2-10-94)

**§ 90.05 JURISDICTION.**

This subchapter shall apply to all properties and buildings within the county which are located outside any incorporated municipality. Municipalities within the county may elect to allow this subchapter to be effective within their corporate limits.

(Ord. passed 2-10-94)

**§ 90.06 NEW ADDRESS ASSIGNMENT.**

The owner, occupant, or person in charge of any building in need of an address in the unincorporated area of the county shall apply to the Addressing Office. Addresses shall be assigned using 1000 numbers per road mile. Even numbers shall be on the right side and odd numbers on the left side as numbers increase.

(Ord. passed 2-10-94) Penalty, see § 90.99

**§ 90.07 DISPLAY OF ADDRESS NUMBERS.**

(A) Every owner of improved property shall purchase and display official address numbers so that they are visible from the road providing access to the property. The following criteria shall be used to properly display the number:

(1) The official address number must be displayed on the front of a building or at the entrance to a building which is most clearly visible from the road during both day and night.

(2) If a building is more than 75 feet from any road or is not visible from the road, the address number shall be displayed at the end of the driveway or easement nearest the road which provides access to the building. The number shall be attached to a fence, gate, mailbox, or the like adjacent to the road right-of-way.

(3) Numerals indicating the address number of a single-family dwelling shall be at least three inches in height and shall be posted and maintained so as to be legible from the road.

(4) Numerals for multiple dwelling units and non-residential buildings shall be at least four inches in height and shall be placed on the front of the building facing the road or on the end of the building nearest the road. Individual units shall be required to display unit numbers at least three inches in height on the front door or immediately adjacent to the door.

(5) Numerals must be of contrasting color to the background and shall be plain block numeric numbers, not alpha print. It is recommended that these numbers be reflective to ensure better visibility at night.

(6) Mobile home lots shall have sequential address numbers throughout the park. Each lot shall have a separate address number assigned. The address number of each lot must be clearly displayed on the lot by being attached to the mobile home or on the electrical utility box for each lot when the lot is vacant, consistent with § 90.07(A)(1) above. When the mobile home lot is owned by the occupant, the owner/occupant is responsible for the posting and maintenance of the address number. When the lot is leased or rented, the landlord shall be responsible for the posting and maintenance of the address number, in accordance with this section.

(7) The address shall be placed on existing buildings within 30 days from the date of the mailing of the letter of notification required under § 90.04.

(B) The Address Coordinator shall have the authority to authorize and approve alternate methods of displaying address numbers which meet the intent of § 90.07 when strict adherence to these standards cannot reasonably be met.

(Ord. passed 2-10-94) Penalty, see § 90.99

**§ 90.08 ENFORCEMENT.**

(A) Owners or occupants of buildings already constructed which do not comply with this subchapter shall be notified and instructed to meet the requirements of this subchapter within 60 days from the date of mailing of the notification. If, after 60 days from the notification letter, the requirements have not been met, then a Notice of Violation shall be issued and sent by registered or certified mail. If the owner or occupant does not comply voluntarily with this subchapter within 30 days after delivery of the Notice of Violation, then enforcement action pursuant to G.S. § 153A-123 may be initiated.

(B) Final approval for a certificate of occupancy of any principal building erected or repaired after the effective date of this subchapter shall be withheld until a permanent and proper address has been displayed in accordance with the requirements outlined in this subchapter.

(C) No certificate of completion will be issued for mobile home parks until address numbers are properly displayed for each lot within the park.  
(Ord. passed 2-10-94; Am. Ord. passed 7-19-21)

**§ 90.09 LEGAL PROVISIONS.**

(A) This subchapter may be amended by the County Board of Commissioners.

(B) Insofar as the provisions are inconsistent with the provisions of any other law except a provision of state or federal law, the provisions of this subchapter shall control.

(C) Where notice is required pursuant to this subchapter, the county shall be deemed to have complied with its duties of notification by depositing such notice in the United States Postal Service system, addressed to such address as appears upon the tax listing records of the County Tax Assessor's office for such property owner.  
(Ord. passed 2-10-94)

**ROAD NAMING****§ 90.20 DEFINITIONS.**

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

**ADDRESS COORDINATOR.** The official of the county charged with the administration of this subchapter, including any authorized agents or delegates.

**BUILDING.** Any structure having a roof supported by columns or walls and intended for shelter, housing, or enclosure of persons, animals, chattels, or equipment. When separated by division walls from the ground up without openings, each portion of the building may be deemed a separate building. For the purpose of this subchapter, **BUILDING** may also include other manmade structures.

**DRIVEWAY.** Begins at the property line of a lot abutting a public road, private road, easement, or private right-of-way, and leading to a building, use, or structure on that lot. A **DRIVEWAY** only serves a single building, use, or structure.

**PRIVATE ROAD.** A road not maintained by the State Department of Transportation which is not intended to become a public road but which shall be used for access to a particular site, group development, or business.

**PUBLIC ROAD.** Any road, street, highway, thoroughfare, or other way of passage that has been irrevocably dedicated to the public, or in regard to whether it is open for travel. This definition shall include any road located on a public right-of-way which either has been accepted for maintenance by the state or which has been dedicated for public travel by the recording of a plat of a subdivision with the County Register of Deeds Office.

**ROADWAY.** Any road, street, drive, land, cartway, tramway, easement, right-of-way, access area, thoroughfare, highway, boulevard, or any other corridor used for, or having the potential use as, a means of conveyance by a motor vehicle.

**ROAD ADDRESS.** The combination of numbers and road names assigned by the county which uniquely identifies a particular building or lot.

**STATE ROAD NUMBER.** A number assigned by the State Department of Transportation; also known as the **SR** number for secondary state maintained roads.

**SUBDIVISION.** All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new road or a change in existing roads.

**SUFFIX.** The following shall be used after a roadway name: avenue, boulevard, circle, court, cove, drive, estate, gardens, heights, highway, lake, lane, loop, park, place, plaza, point, ridge, road, square, street, terrace, trace, trail, village, or way.  
(Ord. passed 9-3-92; Am. Ord. passed 6-5-95)

**§ 90.21 PURPOSE.**

The purpose of this subchapter is to eliminate duplicate or phonetically similar road names, and to provide for the uniform marking of roads in order to facilitate provision of adequate public safety and emergency response services. It is further designed to establish an official map and listing of all roads in the county, and to establish the procedure by which a road may be named or by which an existing name may be changed.  
(Ord. passed 9-3-92)

**§ 90.22 AUTHORITY.**

This subchapter is adopted under the authority and provisions of the G.S. §§ 153A-121, 153A-238, and 153A-239.1, and local modifications thereto.  
(Ord. passed 9-3-92)

**§ 90.23 DUTIES OF THE ADDRESSING OFFICE.**

Under the authority set forth in § 90.22, the County Addressing Office, hereafter referred to as the **ADDRESSING OFFICE**, shall develop and maintain a list of all road names in the county as well as maintain Official County Map Booklets exhibiting the approved names and location of all roads in the county for 911 Emergency Vehicles. It shall also serve as a clearinghouse for all information regarding the names and location of roadways in the county.  
(Ord. passed 9-3-92)

**§ 90.24 JURISDICTION.**

This subchapter shall apply to all roads within the county which are located outside any incorporated municipality. Municipalities within the county may elect to allow this subchapter to be effective within their corporate limits.  
(Ord. passed 9-3-92)

**§ 90.25 PUBLIC HEARING REQUIRED FOR NAMING OR RENAMING ROADS.**

The Addressing Office, in consultation with the Emergency Operations Coordinator, Fire Departments, and any other office or agency it deems necessary, is authorized to recommend new road

names and name changes to the County Board of Commissioners for public roads outside the corporate limits of any municipality within the county.

Pursuant to G.S. §153A-239.1, the Board of Commissioners shall not name or rename a road until it has held a public hearing on the matter. At least ten days before the day of the hearing, the Board of Commissioners shall cause notice of the time, place, and subject matter of the hearing to be prominently posted at the County Courthouse, in at least two public places in the township or townships where the road is located, and shall publish a notice of the hearing in a newspaper of general circulation published in the county.

(Ord. passed 9-3-92; Am. Ord. passed 7-19-21)

#### **§ 90.26 ROAD NAMING PROCEDURES FOR PRIVATE ROADS.**

(A) In the event that there are private roads which have no name on file with the Addressing Office, that department shall first determine if at least 65% of land owners adjacent to the road are in agreement as to a particular name. In the event of such agreement and upon the recommendation of the Addressing Office, the County Board of Commissioners shall have the option of declaring the newly selected name to be the official road name, after the public hearing described in (C) and it shall be placed on file in accordance with the provisions of § 90.23 above.

(B) In the event that there are private roads which have no name on file with the Addressing Office, and in the event that an agreement has not been reached by at least 65% of adjacent land owners as to a particular name, the Addressing Office shall make a name recommendation to the County Board of Commissioners which will have the public hearing described in (C) and then determine the name.  
(Ord. passed 9-3-92)

(C) Pursuant to G.S. §153A-239.1, the Board of Commissioners shall not name or rename a road until it has held a public hearing on the matter. At least ten days before the day of the hearing, the Board of Commissioners shall cause notice of the time, place, and subject matter of the hearing to be prominently posted at the County Courthouse, in at least two public places in the township or townships where the road is located, and shall publish a notice of the hearing in a newspaper of general circulation published in the county.

(D) Names may be initially assigned to new roads by recordation of an approved subdivision plat without following the procedure established by this Chapter.  
(Ord. passed 9-3-92; Am. Ord. passed 7-19-21)

#### **§ 90.27 NOTICE OF ACTION FOR ALL ROADS.**

(A) A road name shall be assigned to any public or private road, or roadway which provides access to two or more residences, businesses, industries, or combination thereof, regardless of the length of the road.

(B) The Addressing Office is authorized to determine the need for road names and name changes and to recommend such additions or changes to the County Commissioners for both private and public roads outside the corporate limits of any municipality within the county.

(C) In addition, citizens may request the Board of Commissioners to change the name of a road as described in this section. Property owners who want to have the name of a road changed must submit a petition (form to be provided by the Addressing Office) to the Address Coordinator for verification. The Address Coordinator will make recommendations to the County Board of Commissioners after the following criteria have been met:

(1) A \$75 fee for each road, to cover legal advertisement, shall accompany any petition requesting that an existing road name be changed.

(2) The petition should include the existing road name, the proposed road name, and the signatures of at least 65% of those persons owning property adjacent to the road.

(3) The Address Coordinator shall cause the request to be advertised pursuant to G.S. § 153A-239.1.

(4) In the event the Address Coordinator and the Board of County Commissioners approve the request, the petitioners shall be required, prior to installation, to pay the county for the cost of purchasing new signs and erecting them.

(D) After naming or renaming a road the Addressing Office shall cause notice of its action to be given to the Postmaster(s) with jurisdiction over the road, to the State Department of Transportation (in the case of public roads), to any city within five miles of the road, and to the following agencies: County 911 Director, Fire Department(s) with jurisdiction over the road, Land Records Office, and School Board.

(Ord. passed 9-3-92)

**§ 90.28 MOBILE HOME PARKS, CONDOMINIUMS, PLANNED UNIT DEVELOPMENTS, APARTMENTS, PUBLIC HOUSING DEVELOPMENTS, AND TRAVEL TRAILER PARKS.**

Where county records are incomplete, the owners of existing mobile home parks, condominiums, apartments, public housing developments and travel trailer parks shall, upon request of the Addressing Office, submit a legible and accurate map of their development, including but not limited to the location, name, and width of each roadway. Each lot or building within the development must also be identified.

(Ord. passed 9-3-92) Penalty, see § 90.99

**§ 90.29 PROHIBITED ROAD NAMES.**

The Addressing Office may disapprove newly proposed street names which fall under the following categories:

(A) Road names that are duplicated or deceptively similar to the name of any other public or private road in the county, including a phonetic similarity. This shall include road names that have a different suffix.

(B) Road names which have numbers as part of the name.

(C) Road names which are over fifteen characters in total length, including spaces, but not including suffixes.

(D) Road names that are similar to the name of an existing subdivision unless the road lies within that same subdivision.

(Ord. passed 9-3-92)

**§ 90.30 ROAD SIGNS.**

(A) All public roadways in unincorporated parts of the county shall be identified by a sign meeting the current state Department of Transportation sign specifications. These road signs shall be placed at intersections and shall identify intersecting roads.

(B) All private roadways in unincorporated parts of the county shall be identified by a sign showing the official name. These signs shall be placed at intersections and shall meet the current state Department of Transportation sign specifications, unless the County Board of Commissioners give their written consent.

(Ord. passed 9-3-92) Penalty, see § 90.99

**§ 90.31 AMENDMENTS.**

This subchapter may be amended further by the County Board of Commissioners.

(Ord. passed 9-3-92)

**§ 90.99 PENALTY.**

(A) Any violation of §§ 90.01 through 90.09 may be subject to civil remedies as set forth in G.S. § 153A-123. Nothing herein contained shall prevent the county from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. passed 2-10-94)

~~(B) Any person who shall violate any provision of §§ 90.20 through 90.30 or destroy, mar, remove, or deface any street sign shall be charged with Class 3 misdemeanor and upon conviction be subject to fine not to exceed \$50 or by imprisonment of not more than 30 days, as provided by G.S. § 14-4(a). Nothing herein contained shall prevent the county from taking such other lawful action as is necessary to prevent or remedy any violation. Any violation of §§ 90.20 through 90.30 may be subject to civil remedies as set forth in G.S. § 153A-123.  
(Ord. passed 9-3-92)~~

**§ 90.100 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 90 originally adopted September 3, 1992, and all subsequent amendments, and shall be effective on and after January 3, 2022~~July 19, 2021~~.

## CHAPTER 92: FIRE PREVENTION

### Section

- 92.01 [Authority](#)
- 92.02 [Intent](#)
- 92.03 [Technical Codes and Standards Adopted by Reference](#)
- 92.04 [Inspection of Building and Premises](#)
- 92.05 [Permits](#)
- 92.06 [Service of Orders or Notices](#)
- 92.07 [Emergency Entry](#)
- 92.08 [Investigation of Fires](#)
- 92.09 [Fire Records](#)
- 92.10 [Maintaining a Fire Hazard](#)
- 92.11 [Carelessness with Fire](#)
- 92.12 [Parking in Front of a Fire Hydrant, Fire Station, or Fire Lane](#)
- 92.13 [Severability](#)
- 92.14 [Conflict with Other Laws](#)
- 92.15 [Enforcement Provisions](#)
  
- 92.99 [Penalties and Remedies for Violations](#)

[Appendix A](#): Civil Penalty Schedule for Fire Prevention Code Violations of Volume V –  
Fire Prevention of the North Carolina State Building Code

### § 92.01 AUTHORITY.

This chapter is adopted pursuant to N.C.G.S. §153A-121 and §143-138(e).

### § 92.02 INTENT.

(A) It is the intent of this chapter to prescribe regulations consistent with nationally recognized good practice for the safeguarding of life and property within the unincorporated limits of Haywood County from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from hazardous conditions in the use or occupancy of buildings or premises.

**Haywood County – General Regulations**

(B) These regulations shall also be controlling within the corporate limits of any municipality within Haywood County upon request by resolution from the governing body of the municipality and upon approval of the Board of County Commissioners by resolution.

(C) This chapter shall not be construed to hold the County responsible for any damage to persons or property by reason of the inspection or reinspection authorized herein or failure to inspect or reinspect or the permits issued or denied as herein provided or by reason of the approval or disapproval of any equipment authorized herein.

(Ord. passed 12-18-00)

**§ 92.03 TECHNICAL CODES AND STANDARDS ADOPTED BY REFERENCE.**

(A) There is hereby adopted by reference and incorporated herein that certain code known as and entitled, “*Volume V – Fire Prevention*” of the North Carolina State Building Code, 1996 Edition. Copies of the Fire Prevention Ordinance of Haywood County and all technical codes and standards are available for public inspection in the office of the Fire Marshal.

(B) Amendments to codes and standards adopted by reference herein which are adopted and published by the North Carolina State Building Code Council shall be effective in Haywood County at the time such amendments become a part of “*Volume V – Fire Prevention*” of the North Carolina State Building Code.

(Ord. passed 12-18-00)

**§ 92.04 INSPECTION OF BUILDINGS AND PREMISES.**

Subject to the limitations and conditions stated in the North Carolina State Building Code, it shall be the duty of the Fire Marshal’s Office to inspect or to cause to be inspected as often as he may deem necessary or appropriate all buildings, structures, and premises within his jurisdiction for the purposes of ascertaining and causing to be corrected any condition which may cause fire or explosion, endanger life from fire or explosion, or any violations of the provisions of this chapter.

(Ord. passed 12-18-00)

**§ 92.05 PERMITS.**

(A) *Fire Prevention Permits.*

(1) This chapter shall require permits from the Fire Marshal’s Office as set forth in Chapter 4 of “*Volume V – Fire Prevention*” of the North Carolina State Building Code.

(2) It shall be the duty of the Fire Marshal’s Office or the Fire Inspector to evaluate applications and issue, if approved, all permits for those conditions as prescribed in Chapter 4 of “*Volume V – Fire Prevention*” of the North Carolina State Building Code and this chapter.

(3) No person shall maintain, store or handle materials or conduct processes which produce conditions hazardous to life or property or install equipment used in connection with such activities without first obtaining a permit as required by the Fire Marshal's Office and prescribed in Chapter 4 of "*Volume V – Fire Prevention*" of the North Carolina State Building Code and this chapter. Before a permit may be issued, the Fire Marshal's Office shall inspect and approve the receptacles, vehicles, buildings, structures, storage areas, devices, processes and conditions related to the permit.

(4) A permit may be revoked pursuant to the provisions of Chapter 4 of "*Volume V – Fire Prevention*" of the North Carolina State Building Code. Any person may appeal said revocation to the Haywood County Board of Commissioners within thirty (30) days.

(5) To provide for efficient, timely handling of duties set forth in N.C.G.S. §14-284, §14-410 and §14-413, and with greater convenience to the public, authority is granted to the Fire Marshal's Office to act as the agent of the Board of Commissioners to approve/disapprove issuance of permits and licenses for the storage of explosives and the exhibition of pyrotechnics at public celebrations, related to the permit

(B) *Other Permits.*

This chapter shall not exempt a person who has obtained a permit pursuant to this chapter from any other permits required by other State, Federal, and Local Laws.  
(Ord. passed 12-18-00)

**§ 92.06 SERVICE OF ORDERS OR NOTICES.**

(A) The service of orders or notices for the correction of violations of this chapter shall be made upon the owner, occupant or other person responsible for the conditions, either by personally delivering a copy of same to such person or by delivering the same to and leaving it with any person in charge of the premises or by sending a copy of the order or notice by certified or registered mail to the owner's last known address.

(B) When building or other premises are occupied by one other than the owner under a lease or other agreement, the orders or notices issued to correct violations of this chapter arising out of operations conducted on the premises shall apply to the occupant thereof; provided that where the order changes in the premises themselves which may become part of the real property of the owner, then in such cases, the orders or notices shall also be issued to the owner of the premises or real property. Failure to deliver an order or notice to the owner, if other than the occupant, shall not invalidate any order or notice duly served on the occupant.  
(Ord. passed 12-18-00)

**§ 92.07 EMERGENCY ENTRY.**

(A) The Fire Marshal or his authorized representatives shall have the right to enter any building or premises without permission or warrant in the event of any emergency situation constituting an immediate threat to human life, property, or the public safety for the purpose of eliminating, controlling, or abating the dangerous condition or situation.

(B) If entry or access is denied so as to limit the authorized duties of this chapter, the Fire Marshal or his authorized representatives shall seek and obtain an administrative search warrant pursuant to N.C.G.S. §15-27.2.

(Ord. passed 12-18-00)

**§ 92.08 INVESTIGATION OF FIRES.**

The County Fire Marshal's Office will cooperate in any way with the law enforcement agency having jurisdiction of any fire. The Fire Marshal's Office may designate a team of trained investigators to determine cause and origin of any fire and will assist in their efforts by supplying and equipping resources or other methods as possible and deemed feasible by the Fire Marshal's Office. Investigations will remain the responsibility of the appropriate fire chief until he or she deems necessary to release the scene to the authorized representatives of the Fire Marshal's Office. An automatic investigation will be initiated if loss of life occurs during a fire or when other circumstances are deemed to warrant an investigation. Any information obtained pursuant to any such investigation shall be confidential as authorized by N.C.G.S. Chapter 58, Article 79.

(Ord. passed 12-18-00)

**§ 92.09 FIRE RECORDS.**

Each fire department shall compile records of fire alarms and other responses and forward these records to the North Carolina Fire Commission as prescribed in N.C.G.S. Chapter 69-1. All such records shall be considered public records.

(Ord. passed 12-18-00)

**§ 92.10 MAINTAINING A FIRE HAZARD.**

No person shall knowingly maintain a fire hazard.

(Ord. passed 12-18-00)

**§ 92.11 CARELESSNESS WITH FIRE.**

No person shall deliberately, or through carelessness or negligence, set fire to or cause the burning of any person or property.

(Ord. passed 12-18-00)

**§ 92.12 PARKING IN FRONT OF A FIRE HYDRANT, FIRE STATION, OR FIRE LANE.**

(A) No person shall park a vehicle or permit it to stand, whether attended or unattended, within 15 feet in either direction of a fire hydrant or the entrance to a fire station.

(B) No person shall park a vehicle or permit it to stand unattended in any area designated as a fire lane. Persons loading or unloading supplies or merchandise may park temporarily in a fire lane located in a shopping center or mall parking lot as long as the vehicle is clearly designated as a delivery vehicle. The prima facie rule of evidence created by G.S. §20-162 is applicable to prosecutions for violation of this section. The operator of a vehicle parked in violation of this chapter shall be charged with a civil penalty for fire code violations pertinent to the type of occupancy where it occurred not to exceed \$25.00.

(Ord. passed 12-18-00)

**§ 92.13 SEVERABILITY.**

The Board of Commissioners of the County of Haywood hereby declares that should any section, paragraph, sentence, or word of this Chapter or of the Code hereby adopted be declared for any reason to be invalid, the remaining sections shall be in full force and effect.

(Ord. passed 12-18-00)

**§ 92.14 CONFLICT WITH OTHER LAWS.**

Nothing in this chapter shall be constructed to conflict with Article 18, Chapter 95 of the General Statutes of North Carolina as enacted and as may be amended from time to time.

(Ord. passed 12-18-00)

**§ 92.15 ENFORCEMENT PROVISIONS.**

(A) The Fire Prevention Ordinance of Haywood County shall be enforced by the Haywood County Fire Marshal or the Fire Inspector as certified by the North Carolina Code Officials Qualification Board or as otherwise provided herein by Haywood County policies.

(B) This chapter and “*Volume V – Fire Prevention*” of the North Carolina State Building Code may be enforced by any methods authorized by N.C.G.S. §153A-123, including the criminal provisions of N.C.G.S. 14-4 as referenced below. Each day’s continuing violation shall constitute a separate offense. Enforcement by civil or criminal procedures shall be carried out in accordance with the procedures outlined below.

(C) Any of the below stated actions or combination thereof may be pursued for any violation of this chapter.

(Ord. passed 12-18-00)

**§ 92.99 PENALTIES AND REMEDIES FOR VIOLATIONS.**

(A) *Criminal Penalties.* Violation of this chapter shall constitute a ~~Class 3 general~~ misdemeanor under N.C.G.S. 14-4 punishable by a fine not to exceed \$500 or imprisonment for not more than ~~twenty thirty~~ (2030) days or both. Each day's violation shall be treated as a separate offense.

(1) *Warning Report.* Upon an initial violation of a particular provision of this chapter an individual may be issued a warning report. Such warning report shall identify the particular practice which is in violation of this chapter and shall state the time, date and place of the violation.

(2) *Warrant.* If an individual violates this chapter within the six (6) months following the issuance of a warning report in a manner that is similar to the violation specified in the warning report, the Haywood County Fire Marshal by and through a Fire Inspector may cause a warrant to be issued for the arrest of the individual.

(3) *Civil Penalties.* Any individual who is found in violation of this chapter may be subject to a civil penalty as set out in Appendix A “*Civil Penalty Schedule for Fire Prevention Code Violations of Volume V – Fire Prevention of the North Carolina State Building Code*” as allowed by G.S. §153A-123. Each day's violation shall be treated as a separate offense.

(B) *Civil Penalties.* Any individual who is found in violation of this chapter may be subject to a civil penalty as set out in Appendix A “*Civil Penalty Schedule for Fire Prevention Code Violation of Volume V – Fire Prevention of the North Carolina State Building Code*” as allowed by G.S. §153A-123. Each day's violation shall be treated as a separate offense.

(1) *Compliance Order.* Upon making a determination that a person is in violation of this chapter, the Haywood County Fire Marshal's Office shall issue a Compliance Order to the person in violation of this chapter. Such order shall identify the circumstances giving rise to the violation, including the times, dates, and places of the violation. Such notification shall further identify the action which is necessary to comply with this chapter. Such notification shall state that if the violator does not comply within a reasonable time not to exceed 45 days the individual will be subjected to a civil penalty. If circumstances exist such that the violator cannot come into compliance within 45 days, the Haywood County Fire Marshal's Office may grant an extension of time commensurate with the magnitude of the violation. The Compliance Order shall further state that failing to comply with the terms of the Compliance Order will subject the violator to a civil penalty, and shall further state the amount of said civil penalty.

(2) *Civil Penalty.* Failing to comply with the terms of a compliance order issued by the Haywood County Fire Marshal's Office within the time stated in the Order shall subject the violator to a civil penalty as set out in Appendix A “*Civil Penalty Schedule for Fire Prevention Code Violations of Volume V – Fire Prevention of the North Carolina State Building Code*” as allowed by G.S. §153A-123. Each day that the violation continues shall be considered a separate offense and may subject the violator to an additional civil penalty for each such separate offense.

(C) *Equitable Remedies.* This chapter may be enforced by equitable remedies, and any unlawful condition existing in violation of this chapter may be enforced by injunction and order of abatement in accordance with G.S. §153A-123.

(1) *Injunction.* Where necessary to effectuate compliance with this chapter, the Haywood County Fire Marshal’s Office may institute an action in a court of competent jurisdiction seeking an injunction against the further violation of this chapter. Such action instituted to collect accrued civil penalties in accordance with the provisions above.

(2) *Order of Abatement.* Where necessary to abate a condition existing upon land in violation of this chapter or a use made of land in violation of this chapter the Haywood County Fire Marshal’s Office may institute an action in a court of competent jurisdiction seeking an order of abatement of the use or condition of land in violation of this chapter. Such action may be joined to an action for an injunction and/or an action to recover civil penalties accrued against an individual for the use or condition of land in violation of this chapter.

(3) *Other Equitable Remedies.* This chapter may be enforced by any other equitable remedy which a court of competent jurisdiction deems just and proper.  
(Ord. passed 12-18-00; Am. Ord. passed 1-3-22)

**§ 92.100 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 92 originally adopted December 18, 2000, and all subsequent amendments, and shall be effective on and after January 3, 2022.

## APPENDIX A

**CIVIL PENALTY SCHEDULE  
FOR FIRE PREVENTION CODE VIOLATIONS OF VOLUME V – FIRE PREVENTION  
OF THE NORTH CAROLINA STATE BUILDING CODE**

A.	Violations of the Ordinance not covered by the Building Code	25.00
B.	Violations covered by the Building Code	<i>Dollar Amount</i>
	<i>Chapter</i>	
	1. Administration	.00
	2. Definitions and Abbreviations	.00
	3. Recognized Standards and Publications	.00
	4. Permits and Certifications	25.00
	5. General Precautions Against Fire	25.00
	6. Fire Protection	25.00
	7. Electrical	25.00
	8. Maintenance of Exit Ways	100.00
	9. Flammable and Combustible Liquids	25.00
	10. Application of Flammable Finishes	25.00
	11. Bowling Establishments	25.00
	12. Dry Cleaning Plants	25.00
	13. Manufacturing of Organic Coatings	25.00
	14. Oil-Burning Equipment	25.00
	15. Compressed Gases	25.00
	16. Liquefied Natural Gas	25.00
	17. Liquefied Petroleum Gases	25.00
	18. Cryogenic Fluids	25.00
	19. Explosives, Blasting Agents, Ammunition	25.00
	20. Fireworks	25.00
	21. Prevention of Dust Explosions	25.00
	22. Hazardous Chemicals	25.00
	23. Cellulose Nitrate Plastic (Pyroxylin)	25.00
	24. Cellulose Nitrate Motion Picture Film	25.00
	25. Fruit Ripening Processes	25.00
	26. Fumigation and Thermal Insecticidal Fogging	25.00
	27. Magnesium	25.00
	28. Mechanical Refrigeration	25.00
	29. Welding and Cutting, Calcium Carbide and Acetylene	25.00
	30. Airports, Heliports, and Helistops	25.00
	31. Assembly Occupancies	100.00
	32. Automobile Tire Rebuilding Plants	25.00

## Fire Prevention

9

33. Combustible Fibers	25.00
34. Covered Mall Buildings	25.00
35. Garages	25.00
36. High-Piled Combustible Stock	25.00
37. Lumber Yards and Woodworking Plants	25.00
38. Ovens, Industrial Baking and Drying	25.00
39. Tents and Air Supported Structures	25.00
40. Wrecking Yards, Junk Yards or Waste Material Handling Plants	25.00
41. Decorative Materials	25.00
42. Hazardous Production Material (HPM) Facilities	25.00
43. Furnishings	25.00

## CHAPTER 98: CHILD SAFETY ZONES

### Section

98.01	Title
98.02	Authority
98.03	Purpose
98.04	Definitions
98.05	Entrance into a Recreation Facility Child Safety Zones by Registered Sex Offenders
98.06	Penalties
98.07	Notice of Property Designation as a Recreational Facility Child Safety Zones Required
98.08	Special Limited Permit of Exemption Allowed
98.09	Conflict with Other Ordinances
98.10	Severability
98.11	Effective Date

### **§ 98.01 TITLE**

This chapter shall be known and may be cited as the "Child Safety Zone Ordinance of Haywood County, North Carolina."

### **§ 98.02 AUTHORITY**

This chapter is established by the Haywood County Board of Commissioners pursuant to the authority and powers granted in Article 6 of Chapter 153A of the North Carolina General Statutes.

### **§ 98.03 PURPOSE**

The purpose of the regulations in this chapter is to restrict only registered sex offenders from entering certain lands or facilities that may be designated as a Recreation Facility Child Safety Zones by the Haywood County Board of Commissioners in accordance with this chapter.

It is the intent of this chapter to promote the general welfare and safety of Haywood County's citizens by preserving the peaceful enjoyment of Haywood County Parks and Recreational Facilities by the children and citizens of the county, and by other persons.

### **§ 98.04 DEFINITIONS**

For the purpose of this chapter, the following words and terms used herein are defined as follows:

**REGISTERED SEX OFFENDER.** An individual who is registered in any state or federal agency as a sex offender and whose name is published on any state or federal registered sex offender listing, including, but not limited to, the sex offender registry established in Article 27A of Chapter 14 of the North Carolina General Statutes.

RECREATION FACILITY CHILD SAFETY ZONE. Any publicly owned land or facility which is designated by the Haywood County Board of County Commissioners as a Recreation Facility Child Safety Zone. In making such designation the Haywood County Board of County Commissioners shall issue a finding that the land or facility is frequented by children of less than eighteen (18) years of age for recreational or athletic purposes and that said land or facility lacks adequate adult supervision to protect the welfare and safety of children from registered sex offenders.

#### **§ 98.05 ENTRANCE INTO A RECREATION FACILITY CHILD SAFETY ZONE BY REGISTERED SEX OFFENDERS**

It shall be unlawful for any Registered Sex Offender to knowingly enter into or on the premises of any publicly owned land or facility designated by the Haywood County Board of County Commissioners as a Recreational Facility Child Safety Zone, except as authorized by the Sheriff pursuant to Section 98.08.

#### **§ 98.06 PENALTIES**

Any person who violates this ordinance shall be subject to the criminal penalties of N.C.G.S. 14-4, with a maximum fine of ~~not less than~~ \$500 per offense ~~and/or 30 days in jail~~. Each and every separate entry into a Recreation Facility Child Safety Zone, regardless of the time period involved, shall constitute a separate offense under this Ordinance. (Ord. passed 5-5-08; Am. Ord. passed 1-3-22)

#### **§ 98.07 NOTICE OF PROPERTY DESIGNATION AS A RECREATIONAL FACILITY CHILD SAFETY ZONE REQUIRED**

Any property designated by the Haywood County Board of County Commissioners as a Recreational Facility Child Safety Zone shall, within sixty (60) days of such designation, have erected in a conspicuous place within that zone, signage informing the public of the regulations contained in this Ordinance.

#### **§ 98.08 SPECIAL LIMITED PERMIT OF EXEMPTION ALLOWED**

The Sheriff of Haywood County, or his designee, shall have authority to grant special limited exemption to individuals that are Registered Sex Offenders to be temporarily exempted from the prohibitions contained in this Ordinance. Such temporary exemption shall set out, in writing, the period of time and the particular circumstances under which the exemption exists. Any person granted such exemption shall have in his/her possession at all times while on the premises of Recreation Facility Child Safety Zone such written permission from the Sheriff of Haywood County.

#### **§ 98.09 Conflict with Other Ordinances**

Should the regulations of this Chapter conflict with the requirements of another ordinance, the more restrictive standard shall govern.

**§ 98.10 Severability**

Should any section or provision in this Chapter be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Chapter as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional, which shall remain in full force and effect.

**§ 98.11 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 98 originally adopted May 5, 2008, and all subsequent amendments, and shall be effective on and after January 3, 2022.

## CHAPTER 113: HELICOPTER SIGHTSEEING

### Section

- 113.01 [Definitions](#)
- 113.02 [Regulations](#)
  
- 113.99 [Penalty](#)

### § 113.01 DEFINITIONS.

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

***HELICOPTER.*** Any rotary wing aircraft or non-fixed wing aircraft powered or propelled in any fashion.

***HELICOPTER SIGHTSEEING OPERATION.*** An individual, corporation or commercial enterprise that carries passengers by helicopter for compensation from one site and returning such passengers to the original site, for the purpose of aerial observation of landmarks and other manmade or natural sites, touring, pleasure flying or amusement or for the purpose of transporting passengers for tourist-related activities.  
(Ord. passed 2-6-95)

### § 113.02 REGULATIONS.

~~It shall be unlawful and a misdemeanor to operate or maintain any helicopter sightseeing operation from or within the boundaries of Haywood County. A violation of this ordinance may be addressed by any of the civil penalty provisions of N.C.G.S. 153A-123.~~  
(Ord. passed 2-6-95; Am. Ord. passed 1-3-22)

### § 113.99 PENALTY.

(A) Any individual, corporation or commercial enterprise violating any provision of this chapter shall be ~~guilty of a misdemeanor, and upon conviction may be fined an amount not exceeding \$50~~; subject to the civil penalty provisions of N.C.G.S. § 153A-123.47

**Haywood County – Business Regulations**

(B) Each takeoff or landing of a helicopter in violation of this chapter shall constitute a separate offense.

(C) In addition to the penalties provided in this section, the county is expressly authorized to institute suit in any court of competent jurisdiction to enforce compliance herewith by injunctive process.

(Ord. passed 2-6-95; Am. Ord. 1-3-22)

**§ 113.100 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 113 originally adopted February 6, 1995, and all subsequent amendments, and shall be effective on and after January 3, 2022.

## CHAPTER 114: JUNKYARDS AND OTHER FACILITIES

### Section

- 114.01 [Definitions](#)
- 114.02 [Findings, Purposes and Objectives](#)
- 114.03 [Geographic Coverage](#)
- 114.04 [General Standards](#)
- 114.05 [Additional Standards](#)
- 114.06 [Exemptions](#)
- 114.07 [Fencing and Screening Requirements](#)
- 114.08 [Maintenance](#)
- 114.09 [Registration and Permitting of Pre-Existing Junkyards, Service Stations, Garages, Used Car Lots, Wrecker Services, and Motor Vehicle Storage Areas](#)
- 114.10 [Non-Conforming Pre-Existing Junkyards, Service Stations, Garages, Used Car Lots, Wrecker Services, and Motor Vehicle Storage Areas](#)
- 114.11 [Permit Required](#)
- 114.12 [Enforcement Provisions](#)
- 114.13 [Penalties and Remedies for Violations](#)
- 114.14 [Appeals and Variances](#)
- 114.15 [Severability](#)
- 114.16 [Effective Date and Revision of Original Ordinance](#)

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00, Am. Ord. passed 7-19-21)

### § 114.01 DEFINITIONS.

For the purposes of this Chapter, certain terms and words are hereby defined; words used in the present tense shall include the future; words used in the singular number shall include the plural number, and the plural the singular; and the word "shall" is mandatory and not directory.

**ACTIVITY.** The use of a land parcel or facility for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**AUTOMOBILE GRAVEYARD.** More than 10 vehicles meeting the definition of junk motor vehicle as defined in this chapter located upon a land parcel that has not been issued a permit as a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**BUILDING.** Any structure having a roof supported by columns or walls, and designated or intended for the shelter, support, enclosure or protection of persons, animals or chattels.

**ENCLOSED BUILDING.** A permanent structure located on a parcel of land configured so as to prevent its contents from being visible from the public road or adjacent land parcel of another.

**ENFORCEMENT OFFICER.** Duly sworn employees of the Planning Office and Haywood County Sheriff's Office and such other persons as may be authorized by the Haywood County Board of Commissioners. The Enforcement Officer is also referred to as the "Officer" in this chapter.

**ESTABLISHMENT.** Any real property on which, or in which, there is operated or maintained any commercial, industrial, or service business or activity.

**FACILITY.** A structure used for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**FARM OR BONAFIDE FARM.** One or more contiguous land parcels under common or separate ownership on which agricultural operations are conducted as the primary use and which meets the definition of agricultural land or horticultural land under G.S. § 105-277.2 (1) and (3). For the purposes of this chapter, farm operations include the cultivation of crops, forest products, or the husbandry of livestock, poultry, or fish.

**FENCE.** A continuous, opaque, unperforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of dirt, wood, stone, steel or other metal, or any substance of a similar nature and strength.

**GARAGE.** An establishment which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles.

**GATE.** A door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier as a part of the fence to which it is attached.

**HEALTH NUISANCE OR SAFETY HAZARD VEHICLE.** A motor vehicle, used machinery or other used materials may be declared to be a health nuisance or safety hazard when it is found to be:

- (1) A breeding ground or harbor for mosquitoes or other insects, snakes, rodents or other pests; or
- (2) A point of collection of pools or ponds of water; or
- (3) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor; or

(4) One which has areas of confinement which cannot be operated from the inside such as trunks, hoods, etc. or is a source of danger from exposed surfaces of metal, glass or other rigid materials; or

(5) So located that there is a danger of the vehicle falling or turning over; or

(6) A point of concentration of car radiators, batteries or other materials that pose either immediate or long-term danger of environmental degradation.

**HOUSING UNIT.** A house, an apartment, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters.

**JUNK.** Scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, iron, steel, or other scrap ferrous or non-ferrous materials; or wrecked, dismantled or uninhabitable mobile homes.

**JUNK MOTOR VEHICLE.** A motor vehicle or other motorized equipment or parts thereof that:

- (1) Is fully or partially dismantled or wrecked; or
- (2) Cannot be self-propelled in its present condition; or
- (3) Does not display a current license plate.

**JUNKYARD.** Any land parcel which is maintained, operated, or used for storing, keeping, buying or selling junk, or junk motor vehicles. The term "junkyard" shall not include any county-operated landfills, collection, or recycling facilities.

**JUNKYARD CONTROL ACT.** G.S. § 136-141 through 155 (Article 12) which delegates to the N.C. Department of Transportation the responsibility to regulate "junkyards" and "automobile graveyards" located on interstate and federal-aid primary system highways.

**LAND PARCEL.** A tract of land which is separately described by the Haywood County Land Records/GIS Office.

**MOTOR VEHICLE.** Any machine designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

**MOTOR VEHICLE STORAGE AREA.** One or more contiguous land parcels under common or separate ownership where junk motor vehicles are stored.

**OPAQUE.** Impervious to light.

**RECYCLING FACILITY.** A temporary or permanent site at which glass, aluminum cans, paper, plastic, clothes or similar materials commonly collected for recycling are collected and

moved off site or kept on site in enclosed buildings, storage bins, solid waste containers, truck trailers or other rolling stock.

**SERVICE STATION.** An establishment which is maintained and operated for the purpose of making mechanical repairs, servicing and/or washing of motor vehicles.

**USED CAR LOT.** An establishment which is maintained and operated for the purpose of selling used automobiles under a license issued by North Carolina Division of Motor Vehicles.

**VECTOR.** An organism that carries pathogens from one host to another.

**VEGETATION.** All season or evergreen vegetation including evergreen trees with leaves or foliage at all seasons of the year. Examples are white pine, southern yellow pine, hemlock and spruce trees.

**WIRE FENCE.** A continuous, translucent, perforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of wire, steel or nylon mesh, or any substance of a similar nature and strength, but which perforations or openings are no larger than 16 square inches.

**WRECKER SERVICE.** A land parcel which is used for the purpose of storing motor vehicles.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00;)

#### **§ 114.02 FINDINGS, PURPOSES AND OBJECTIVES.**

It is hereby found that automobile graveyards and health nuisance or safety hazard vehicles are inherently dangerous and should be prohibited and that junkyards, service stations, garages, used car lots, wrecker services, or motor vehicle storage areas should be regulated.

The purposes and objectives of this chapter include the following:

- (1) To promote the health, safety and welfare of the citizens of Haywood County;
- (2) To protect citizens and residents;
- (3) To promote or enhance the protection of property values throughout the county;
- (4) To attract tourists and promote the prosperity, economic well-being and general welfare of the county;
- (5) To protect surface and groundwater quality; and
- (6) To preserve and protect the natural environment in Haywood County.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.03 GEOGRAPHIC COVERAGE.**

These regulations shall be in effect in all unincorporated portions of Haywood County which are not under the jurisdiction of any municipality.  
(Am. Ord passed 08-21-06)

**§ 114.04 GENERAL STANDARDS.**

(A) All junkyards which are established from and after the effective date of this chapter (November 1, 1997) and any service station, garage, used car lot, wrecker service, or motor vehicle storage area shall meet the following standards:

- (1) A minimum setback of 30 feet from any public or private road surface and outside the right of way of any public or private road; and
- (2) Screened as herein provided, or not visible from the main-traveled way and adjacent properties at any season of the year, or fenced, or fenced and screened and maintained as provided for in § 114.07, subsection (B); and
- (3) Not be located closer than 500 feet of a residence, school or business; and
- (4) Have a 50 foot vegetative buffer from all perennial streams or water bodies as shown on the U.S.G.S. topographic map.

(B) The following criteria shall be applicable to pre-existing junkyards which are registered within 180 days of November 1, 1997, the original effective date of this chapter and service stations, garages, used car lots, wrecker services, or motor vehicle storage areas that are registered within 30 days of May 1, 2000 and no portion of any such junkyard, service station, garage, used car lot, wrecker service, or motor vehicle storage area shall be operated, maintained or expanded, except those meeting at least one of the following conditions:

- (1) Those which are screened by natural land features or vegetation, berms, plantings, fences or other appropriate means which sufficiently preserves the policy and intent of this chapter, or are screened and/or fenced in accordance with § 114.07; or
- (2) Those which are located where the topography and terrain of adjacent lands is such that screening would be ineffective or useless. In these instances, the Enforcement Officer may waive all or part of the fencing or screening requirements, but shall require fencing and screening insofar as is practical and feasible, at all points where such fencing and/or screening shall be necessary to screen or partially screen the view of the property or a health nuisance or safety hazard vehicle as defined by this chapter.

(C) Automobile graveyards are prohibited.  
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.05 ADDITIONAL STANDARDS.**

All junkyards, service stations, garages, used car lots, wrecker services, and motor vehicle storage areas which are established from and after the effective date of this chapter (November 1, 1997), or that have been issued a current valid permit to establish, operate or maintain a junkyard, as provided in § 114.10 hereof shall meet the following additional standards:

(1) **JUNKYARDS** that store more than ten junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(2) **SERVICE STATIONS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(3) **GARAGES** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(4) **USED CAR LOTS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(5) **WRECKER SERVICES** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(6) **MOTOR VEHICLE STORAGE AREAS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.  
(Ord. Passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.06 EXEMPTIONS.**

The following are exempted from regulation by this chapter:

(1) Recycling facilities using enclosed structures or solid waste containers, bins, truck trailers and rolling stock to store materials and equipment; or

(2) Any bona fide farm; or

(3) Motor vehicles that are not visible from outside an enclosed building and are listed as taxable personal property in the Haywood County Tax Assessors Office; or

(4) Abandoned vehicles as defined in G.S. § 153A-132.

(Ord. Passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.07 FENCING AND SCREENING REQUIREMENTS.**

All new and pre-existing facilities, land parcels, or activities regulated in accordance with this chapter shall be operated subject to the following fencing and screening conditions:

(A) New land parcels created, activities commenced or facilities established after the effective date of this chapter shall comply with the chapter by registering, obtaining a permit, meeting the requirements of § 114.04 (A) and meeting the following fencing and screening requirements of this section:

(1) The facility, parcel, or activity shall be entirely surrounded by:

(a) an opaque fence at least six feet in height; or

(b) by either a woven or welded wire (14 gauge minimum) fence at least six feet in height; or

(c) chain link fence a minimum of six feet in height.

With respect to (b) and (c) above, there shall be vegetation that is at least three feet high and no more than six feet apart when planted. The vegetation shall be planted at the time the facility begins operation, or at the next appropriate planting time. The fence and vegetation shall surround the minimum area necessary for the facility to not be visible from a point at the same elevation as the facility. The vegetation shall be planted on the outbound side of the fence, contiguous to, and not more than eight feet from the fence. The vegetation shall be maintained as a continuous, unbroken hedgerow for the period the property is used as a regulated facility. Each owner, operator, or maintainer of a facility shall utilize good horticultural techniques such as pruning, mulching and proper fertilization, so that the vegetation will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.

(2) All operations, equipment, junk and/or junk motor vehicles shall be kept within the confines of the fence or enclosed building at all times.

(B) Pre-existing activities regulated and operating with a proper business license or valid tax number from the North Carolina Department of Revenue on the effective date of this chapter (November 1, 1997) shall comply with this chapter by obtaining a permit as provided in § 114.09 and meeting the requirements for pre-existing service stations, garages, used car lots, wrecker services, junkyard, or motor vehicle storage areas, as set forth in § 114.04, General Standards, subsections B(1) or B(2), or meeting one of the following conditions:

(1) Remove all junk, vehicles or equipment that may be located within 15 feet of a public or private road surface to an area further than 15 feet from the road surface; and install a fence with an all-season vegetation screening between junk materials and property lines; or

(2) Screen and fence the junkyard in accordance with the screening and fencing provisions of § 114.07 (B) for new junkyards; provided, however, if topography renders fencing and screening useless and ineffective, the Enforcement Officer may waive all or part of the fencing and screening requirements as provided in § 114.04 (B)-(3) of this chapter; or

(3) Place in an enclosed building all items regulated by this chapter.  
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### **§ 114.08 MAINTENANCE.**

All junkyards, service stations, garages, used car lots, wrecker services, or motor vehicle storage areas shall be maintained to protect the public from health nuisances and safety hazards. The Enforcement Officer shall inspect each facility once each year to determine that the chapter provisions are being followed. The Enforcement Officer may call upon the health department for advice and consultation as needed regarding vector or rodent problems. Should vectors be identified, the owner/operator/maintainer shall be notified of a violation in writing. Within 30 days of the receipt of the letter, the owner/operator/maintainer shall submit satisfactory evidence to the health department that vectors have been eliminated. Failure to comply with this section may result in revocation of the permit as well as other penalties and remedies for violation as provided for in § 114.13.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### **§ 114.09 REGISTRATION AND PERMITTING OF PRE-EXISTING JUNKYARDS, SERVICE STATIONS, GARAGES, USED CAR LOTS, WRECKER SERVICES, AND MOTOR VEHICLE STORAGE AREAS.**

All owners, operators or maintainers of junkyards existing on the effective date of this chapter (November 1, 1997) shall register same with the Enforcement Officer within a period of 180 days beginning with the effective date of this chapter. All owners, operators or maintainers of service stations, garages, used car lots, wrecker services, and motor vehicle storage areas shall register same with the Enforcement Officer within 30 days from May 1, 2000. All existing junkyards, service stations, garages, used car lots, wrecker services, and motor vehicle storage areas that have not been registered within the stated time shall be in violation of this chapter. Following registration, a permit shall be applied for and obtained as provided for in § 114.11.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### **§ 114.10 NON-CONFORMING PRE-EXISTING JUNKYARDS, SERVICE STATIONS, GARAGES, USED CAR LOTS, WRECKER SERVICES, AND MOTOR VEHICLE STORAGE AREAS.**

(A) All existing junkyards at the effective date of this chapter, registered in accordance with the preceding section, shall be granted a compliance period of 12 months from the effective date of registration to conform to the chapter. All existing junkyards that have not registered within

this period shall be in violation of this chapter. The Enforcement Officer shall monitor such facility at least annually.

(B) All service stations, garages, used car lots, wrecker services, and motor vehicle storage areas existing at the effective date of this chapter, registered in accordance with § 114.09, shall be granted a compliance period of 90 days from the effective date of registration to conform to the chapter. All existing facilities that have not registered within this period shall be in violation of this chapter. The Enforcement Officer shall monitor each facility at least annually. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.11 PERMIT REQUIRED.**

No person, firm or business entity shall establish, operate or maintain a junkyard, service station, garage, used car lot, wrecker service, or motor vehicle storage area at any single location without obtaining a permit for that location. Application for the permit shall be made to the Enforcement Officer, on such forms as he shall prescribe. A plan prepared by the applicant shall be submitted as part of the permitting process.

The plan shall indicate setbacks, location of road rights-of-way, all proposed or existing structures, driveways, entrances, fencing, screening, types of fencing, types of screening, dimensions, gross acreage, owner(s) names(s), address(es), preparer of plan name(s) and address(es). Plans may be drawn to scale or freehand with distances marked, on paper large enough to show details. Three (3) copies shall be submitted.

No expansion, whether pre-existing or newly permitted, may be undertaken until a permit as a new facility is first obtained in accordance with this Section. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.12 ENFORCEMENT PROVISIONS.**

This chapter shall be enforced by the Enforcement Officer. The Officer may call upon other agencies, departments, or offices as necessary to assist in the enforcement of this chapter.

In addition, whenever the Officer receives a written complaint alleging a violation of this chapter, the Officer shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken. The complainant shall provide their name, address, and telephone number upon making a written complaint.

The owner, tenant or occupant of any building or land or part thereof and agent or other person who participates in, assists, directs, creates, or maintains any junkyard, service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area that is contrary to the requirements of this chapter, shall be held responsible for the violation of this chapter and shall suffer the penalties and be subject to the remedies herein provided.

The following procedure shall apply upon discovery of a violation:

- (1) The Enforcement Officer shall give a written notice of violation to the responsible party, in accordance with the provisions of N.C. G.S. Chapter 160D-404. In an appropriate case, the Enforcement Officer may issue a stop-work order in accordance with N.C. G.S. Chapter 160D-404(b) and seek the remedies of Chapter 160D-404(c).
- (2) Appeals from the decisions of the Enforcement Officer may be made to the County Board of Commissioners in accordance with Chapter 160D-405 and -406.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00; Am. Ord. passed 7-19-21)

### § 114.13 PENALTIES AND REMEDIES FOR VIOLATIONS.

~~Violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of any conditions and safeguards established, shall constitute a misdemeanor, punishable by a fine of up to \$50.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.~~

Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$25.00 per violation. Each day shall constitute a separate violation. If the offender fails to pay this penalty within 10 days after being served with a notice of violation, the penalty may be recovered by the county in a civil action in the nature of a debt.

This chapter may also be enforced by appropriate equitable action. Such remedy may include court order of abatement as part of a judgment in the cause. The abatement order may include actions required to make the facility, land parcel or activity comply with the provisions of this chapter at the owner's expense.

Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter. In addition to the foregoing enforcement provisions, this chapter may be enforced by any civil remedy provided in G.S. § 153A-123, including, but not limited to, all appropriate equitable remedies provided in G.S. § 153A-123(d) and particularly the remedy of injunction and order of abatement as allowed in G.S. §153A-123(e).

Any building permit(s) associated with property that has a permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit holder fails to develop or maintain the property in accordance with the plans submitted, the requirements of this chapter, or any additional requirements lawfully imposed.

Before such other permit(s) may be revoked, the permit holder shall be given 10 days written notice of intent to revoke a permit. The notice shall inform the holder of the reasons for the revocation and of his right to obtain an informal hearing on the allegations before the County

Manager. If any permit is revoked, the Enforcement Officer shall provide to the permittee a written statement of the decision and the reasons why the action has been taken.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00; Am. Ord. passed 1-3-22)

**§ 114.14 APPEALS AND VARIANCES.**

- (A) Unless otherwise provided, appeals from any action taken by the Enforcement Officer shall be filed with the Board of Commissioners within 10 days of receipt of notice of such action. The Board of Commissioners shall consider the matter in accordance with the provisions of G.S. 160D-406 as a quasi-judicial proceeding.

The Board of Commissioners may authorize relief from these provisions when, in its opinion, undue hardship may result from strict compliance.

In considering the matter, the Board of Commissioners shall be governed by the conflict of interest provisions of G.S. 160D-109.

- (B) The Board of Commissioners may authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in practical difficulty or unnecessary hardship. Such variance may be granted as a quasi-judicial decision in individual cases upon a finding by the Board of Commissioners that the following conditions exist:

- (1) There are extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape or topography, that are not applicable to similar facilities governed by this chapter;

- (2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to operators of similar facilities governed by this chapter;

- (3) A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other operators of similar facilities governed by this chapter;

- (4) The requested variance will be in harmony with the purpose and intent of this chapter and will not be unduly injurious to the neighborhood or to the general welfare; and

- (5) The variance requested is the minimum variance that will make possible a reasonable legal use of the land in question.

A copy of the decision by the Board of Commissioners shall be prepared and furnished to the applicant within 10 days of its rendition. In granting any variance, the Board of Commissioners may prescribe appropriate conditions and safeguards to insure conformity with this chapter. Violation of such condition and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

(C) Decision of the Board of Commissioners may be appealed to the Superior Court of Haywood County in accordance with the provisions of G.S. 160D-406(k) and these provisions within 30 days after the later of the following occurrences:

(1) A written copy of the Board of Commissioners decision has been filed in the office of the Enforcement Officer; and

(2) A written copy of the Board of Commissioners decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy prior to or at the hearing of the case.

A copy of the petition for writ of certiorari shall be served upon the county through the office of the County Manager.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00; Am. Ord. passed 7-19-21)

#### **§ 114.15 SEVERABILITY.**

Should any section or provision in this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### **§ 114.16 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 114 originally adopted October 6, 1997, and all subsequent amendments, and shall be effective on and after ~~January 3, 2022~~July 19, 2021.

## CHAPTER 115: WIRELESS TELECOMMUNICATIONS FACILITIES

### Section

#### *General Provisions*

- 115.01 [Authority and purpose](#)
- 115.02 [Jurisdiction](#)
- 115.03 [Definitions](#)

#### *Wireless Telecommunication Facilities*

- 115.20 [Special use permit required](#)
- 115.21 [Applicant's certifications](#)
- 115.22 [FCC license required](#)
- 115.23 [Electromagnetic emissions compliance](#)
- 115.24 [Liability insurance](#)
- 115.25 [Public property preference](#)
- 115.26 [Installations utilizing existing structures](#)
- 115.27 [Maintenance/removal agreement](#)
- 115.28 [Abandonment and removal](#)
- 115.29 [Nonconforming uses](#)

#### *Telecommunication Towers*

- 115.40 [Applications for telecommunication towers](#)
- 115.41 [Applicant's burden](#)
- 115.42 [Electric transmission towers](#)
- 115.43 [Presumption favoring existing structures](#)
- 115.44 [Tower height limitations](#)
- 115.45 [Protected federal lands](#)
- 115.46 [Co-location requirements](#)
- 115.47 [Tower and antenna design requirements](#)
- 115.48 [Fall zones and setbacks](#)
- 115.49 [Tower lighting](#)
- 115.50 [Signage](#)
- 115.51 [Site development plans](#)
- 115.52 [Temporary facilities](#)

**Haywood County – Business Regulations**

*Modifications to Approved Facilities*

- 115.70 [Minor modifications](#)
- 115.71 [Major modifications](#)
- 115.72 [Processing and fees](#)

*Annual Permits*

- 115.75 [Annual permit required](#)
- 115.76 [Applicant’s certifications](#)
- 115.77 [Annual permit fee](#)
- 115.78 [Compliance](#)

*Variances*

- 115.80 [Variances](#)
- 115.81 [Public hearing and notice](#)

*Miscellaneous Provisions*

- 115.90 [Penalties](#)
- 115.91 [Validity of individual sections](#)
- 115.92 [Headings and captions](#)
- 115.93 [Effective date, repealers and revival of moratorium](#)
- 115.94 [Effective Date and Revision of Original Ordinance](#)

**GENERAL PROVISIONS**

**§ 115.01 AUTHORITY AND PURPOSE.**

This chapter is enacted pursuant to the general police powers granted to Haywood County by North Carolina General Statutes § 153A-121 and Chapter 160D-932.

(A) The Haywood County Board of Commissioners finds the following facts and circumstances justify and warrant the exercise of those powers with respect to wireless telecommunications facilities in order to protect the health, safety and welfare of its citizens:

(1) Haywood County is blessed with a distinctive mountain topography and natural beauty that defines its cultural identity and provides a special sense of place, and

(2) Haywood County is home to a number of exemplary scenic and recreational resources of national significance located on Federal lands including the nation's oldest and longest scenic byway, the Blue Ridge Parkway, as well as the Appalachian Trail, Great Smoky Mountains National Park, and the Pisgah National Forest; that these scenic and recreational resources draw countless visitors from throughout the nation and drive the economic engine of Haywood County's economy, and

(3) The unregulated and uncoordinated proliferation of telecommunications towers across the region degrades the aforementioned values and qualities, detracts from the natural beauty of the mountains, and is detrimental to the health, safety and welfare of the citizens of Haywood County, and

(4) The protection of the mountains of Western North Carolina was officially recognized as an important public policy by Executive Order 74 signed on March 27, 1995 by the Governor of the State of North Carolina creating the Year of the Mountains Commission, and

(5) The Chairman of the Year of the Mountains Commission challenged local governments in Western North Carolina to protect and improve the beauty, charm and advantages of the mountains and to guide the region's long-term growth, development and destiny through sound planning, and

(6) On February 8, 1996 the President of the United States signed the Telecommunications Act of 1996 into law and Section 704 of that Act (42 U.S.C. 332(c)(7)), with limited exceptions, expressly preserves the authority of State and local governments and instrumentalities thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities, and

(7) The Presidential Memorandum signed by the President of the United States on August 10, 1995 and the General Services Administration Guidelines implementing Section 704(c) of the Telecommunications Act of 1996 published on March 29, 1996 specifically mandate that antenna siting on Federal properties shall comply with all state and local laws and regulations.

(B) In order to accommodate the wireless communication needs of residents, businesses and visitors while protecting the health, safety and welfare of its citizens, the Haywood County Board of Commissioners finds that enactment of this chapter is necessary and advisable in order to:

(1) Facilitate the provision of wireless telecommunications services to residents, businesses and visitors in Haywood County;

**Haywood County – Business Regulations**

(2) Regulate in an orderly manner the placement, construction, modification, maintenance and removal of wireless telecommunication facilities;

(3) Provide a uniform and comprehensive framework for evaluating proposals for wireless telecommunication facilities;

(4) Preserve the scenic and visual character of Haywood County by encouraging the location, design and architectural treatment of wireless telecommunication facilities to minimize their visibility from public places, to avoid intrusion into public vistas, to avoid disruption of the natural and built environment, and to insure harmony and compatibility with surrounding land use patterns;

(5) Encourage the use of existing and approved structures to accommodate wireless telecommunications infrastructure prior to approving additional structures; and

(6) Avoid potential injury to persons and properties from tower failure through structural standards and setback requirements.

(Ord. passed 2-23-98; Am. Ord passed 7-19-21)

**§ 115.02 JURISDICTION.**

This chapter shall regulate the placement, construction and modification of wireless telecommunications facilities on private and public lands throughout Haywood County, except that it shall not be enforced within any incorporated municipality in the County (or within any municipality's extraterritorial jurisdiction where such jurisdiction is being exercised with respect to wireless telecommunication facilities). The following types of installations are excluded from the scope of this chapter:

(A) Amateur radio facilities with antennas mounted on supporting structures less than 100 feet in height.

(B) Television, AM radio and FM radio broadcast transmitting antennas and towers.

(C) Residential antennas for receiving television, AM radio or FM radio broadcast signals.

(D) Customer premise antennas for receiving microwave or satellite signals, provided such antennas are less than one meter (39.4 inches) in height or diameter and are mounted on a support structure less than twelve feet in height.

**§ 115.03 DEFINITIONS.**

The following words, terms and phrases shall have the specific meaning ascribed to them herein. All other words, terms and phrases shall have their ordinary meaning of common usage in the English language.

**ALTERNATIVE STRUCTURE.** A structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. Alternative structures include, but are not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples, billboards and electric transmission towers.

**ANTENNA.** Any exterior transmitting or receiving device which radiates or captures electromagnetic waves (excluding radar signals).

**ANTENNA, DUAL-BAND/MULTI-BAND.** An antenna with separate elements for two or more commercial wireless service frequency bands (example: Cellular and PCS or Specialized Mobile Radio).

**CO-LOCATION.** The placement of additional antennas or antenna arrays on an existing or approved telecommunications tower (or alternative structure), the sharing of an antenna or antenna array, or otherwise sharing a common location by two or more FCC licensed providers of personal wireless services. Co-location includes antennas, transmitters, receivers and related electronic equipment, cabling, wiring, equipment enclosures and other support equipment or improvements located on the tower site.

**COMMERCIAL WIRELESS SERVICE PROVIDER.** Persons who operate radio systems requiring an FCC license and who employ those facilities to provide fixed wireless (including microwave) or mobile wireless communication services to third parties for compensation. Commercial wireless service providers include, but are not limited to, Cellular, Personal Communication Services (PCS), Specialized Mobile Radio (SMR), Enhanced Specialized Mobile Radio (ESMR), paging, and Competitive Local Exchange Carriers (CLEC) utilizing point-to-multipoint microwave.

**DISCERNIBLE.** Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.

**ELECTRIC DISTRIBUTION TOWERS.** Metal or wooden towers and poles used to suspend wires transporting electricity between substations at the terminus of transmission lines and individual customer premises.

**ELECTRIC TRANSMISSION TOWERS.** Metal or wooden towers and poles used to suspend wires transporting electricity between generating plants and substations supplying electricity to distribution and feeder lines.

**EQUIPMENT ENCLOSURE.** A building, cabinet or shelter used to house transmitters, receivers and other electronic equipment and accessories at a wireless telecommunication facility.

**FAA.** Federal Aviation Administration.

**FALL ZONE.** An area around the base of a telecommunication tower required to be kept clear of buildings, other than equipment enclosures associated with the wireless telecommunication facility, to contain debris in the event of a tower structural failure.

**FCC.** Federal Communications Commission.

**FUNCTIONALLY EQUIVALENT SERVICES.** FCC-licensed providers of Commercial Mobile Radio Services (CMRS) classified as Cellular, Personal Communication Services (PCS), Paging, Specialized Mobile Radio (SMR) and Enhanced Specialized Mobile Radio (ESMR).

**GOVERNMENTAL USER.** Federal, State or local governments, or agencies or instrumentalities thereof, volunteer fire departments or rescue squads which operate radio systems (including microwave) requiring an FCC license and which employ those facilities exclusively for intra-governmental or inter-governmental public service, public safety or administrative purposes.

**MAXIMUM CREDIBLE EARTHQUAKE.** The maximum earthquake predicted to affect a given location based on the known lengths of the active faults in the vicinity.

**MODIFICATION.** The addition, removal, repositioning (other than downtilt adjustments), alteration or other material change in the number or type of antennas employed in a wireless telecommunications facility; changes in the height, size, shape or appearance of telecommunications towers; and increases in the number or size of equipment enclosures or other improvements at an existing or approved wireless telecommunication facility.

**ORDINANCE ADMINISTRATOR.** Person designated by the Board of Commissioners to oversee and administer review and approval of applications and permits for wireless telecommunication facilities.

**PERSON.** Any individual, partnership, limited partnership, company, corporation, trust, estate, agency, association or other legal entity and their successors and assigns.

**PRIVATE BUSINESS USER.** Persons who operate radio facilities (including microwave) requiring an FCC license solely for intra-company communications and who do not employ those facilities to offer fixed or mobile wireless communication services to third parties for compensation.

**PROTECTED MOUNTAIN RIDGE.** A ridge at or above 3,000 feet with an elevation of five hundred (500) feet or more above the elevation of an adjacent valley floor.

**REPLACEMENT TOWER.** A telecommunications tower intended to replace an existing approved tower where such replacement tower is (1) at or within 50 feet of the existing tower base, and (2) no higher than the existing tower.

**RIDGE.** The elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

**TELECOMMUNICATIONS TOWER.** Any tower, pole or similar structure twenty (20) feet or more in height, used to support one or more antennas including self-supporting lattice-framed towers or monopoles and guyed towers.

**TEMPORARY FACILITY.** A vehicle-mounted or portable wireless telecommunications facility including portable towers, antennas, equipment enclosures, generators and associated electronics, cabling, wiring and hardware.

**TOWER BASE.** The foundation, usually concrete, on which the telecommunications tower is situated. For measurement calculations, the tower base is the actual or geometric center of the tower.

**TOWER HEIGHT.** The vertical distance measured from the tower base to the highest point on a telecommunications tower, including any antennas or other equipment affixed thereto, but excluding any lightning protection rods extending above the tower and attached equipment.

**TOWER SITE.** The land area which contains, or will contain, a proposed telecommunications tower, and related equipment enclosures and other improvements.

**VEGETATIVE CANOPY.** Trees which create a roof-like layer of spreading branches.

**VISIBLE.** Capable of being seen by the unaided eye in daylight.

**WIRELESS TELECOMMUNICATION FACILITY.** Equipment at a single location used by a private business user, governmental user or commercial wireless service provider to transmit, receive or relay electromagnetic signals (including microwave). Such facility includes antennas or antenna arrays, telecommunications towers, support structures, transmitters, receivers, base stations, combiners, amplifiers, repeaters, filters or other electronic equipment; together with all associated cabling, wiring, equipment enclosures and other improvements.

## **WIRELESS TELECOMMUNICATION FACILITIES**

### **§ 115.20 SPECIAL USE PERMIT REQUIRED.**

It shall be unlawful for any person to place, construct or modify any wireless telecommunication facility within the jurisdiction of this chapter without first obtaining a Wireless Telecommunication Facility Special Use Permit. Permits shall be regulated as follows:

(A) Applications for Special Use Permits will be classified and processed in one of the following categories depending on the characteristics of the proposed installation:

- (1) Installations utilizing existing structures

(2) Telecommunications towers

(3) Modifications to approved facilities

(B) Special Use Permits for wireless telecommunication facilities shall be valid for an initial period of five (5) years. Upon application by the holder of a Special Use Permit within sixty (60) days prior to the expiration of the initial permit period, a review shall be conducted to determine whether and under what conditions the Special Use Permit may be renewed for successive five-year periods. Costs associated with the review process shall be borne by the permittee. Grounds for nonrenewal or revocation include:

(1) The use involved is no longer allowed or fails to comply with the relevant requirements of this chapter or any subsequently enacted land use regulations in effect at the time of renewal and the permittee has failed to supply reasonable assurances to the Ordinance Administrator that the facility will be brought into compliance within ninety (90) days of the initial permit's expiration; or

(2) The permittee has failed to comply with the conditions of approval contained in its Special Use Permit; or

(3) The facility has not been properly maintained; or

(4) The facility has not been upgraded to minimize its impact, including community aesthetics, to the greatest extent permitted by the technology that exists at the time of renewal; or

(5) The permittee has ceased to operate the facility for a continuous period of ninety (90) days or more.

(C) Changes in Special Use Permit conditions at each five-year review shall be limited to changes in tower height. Tower height may not be reduced to such an extent that it displaces a wireless telecommunication facility co-located on the tower.

(D) If a Special Use Permit is not renewed prior to its expiration, it shall automatically become null and void without notice and hearing five (5) years after it is issued or upon cessation of use for more than ninety (90) days, whichever comes first. Within ninety (90) days after expiration or revocation of a Special Use Permit, or the abandonment or cessation of operations of a facility, all installed above-ground improvements (not including any part of the foundation) shall be removed from the property.

(E) A Special Use Permit shall become null and void if the permitted facility is not constructed and placed in service within one year of the date of the County's approval provided, however, that the permit may be extended one time for six (6) months upon payment of an additional \$250 fee if the Ordinance Administrator determines that substantial construction has commenced before expiration of the initial year.

(F) Nonconforming telecommunication towers in existence on the date of enactment of this chapter shall be exempt from the Special Use Permit requirements of this section. However, any increase in height of such a nonconforming tower shall be subject to the provisions of this section.

**§ 115.21 APPLICANT’S CERTIFICATIONS.**

An application for a Special Use Permit for a wireless telecommunication facility shall not be deemed complete until the applicant certifies that:

(A) it has not constructed, maintained, operated or modified any wireless telecommunication facility within Haywood County without the approval of Haywood County; and

(B) if it has constructed, maintained, operated or modified any wireless telecommunication facility within Haywood County without the approval of Haywood County that it has ceased operating and has removed all above-ground portions of such facilities (not including any part of the foundation); and

(C) the proposed wireless telecommunication facility complies with and at all times will be maintained and operated in accordance with, all applicable FCC rules and regulations with respect to environmental effects of electromagnetic emissions; and

(D) any telecommunication tower to be constructed as part of the proposed wireless telecommunications facility is not required to be lighted or painted by rules and regulations of the Federal Aviation Administration; and

(E) all improvements constructed as part of the wireless telecommunication facility shall comply with the Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, Uniform Fire Code, and structural standards of the Electronic Industries Association/Telecommunications Industry Association, where applicable.

**§ 115.22 FCC LICENSE REQUIRED.**

The applicant for a wireless telecommunication facility Special Use Permit must currently be licensed by the FCC to provide fixed or mobile wireless communication services or, if the applicant is not such an FCC licensee, must demonstrate that it has binding commitments from one or more FCC licensees to utilize the proposed wireless telecommunication facility. An application for a Special Use Permit shall not be deemed complete unless it is accompanied by a copy of each applicant’s or tenant’s FCC license and, if the applicant is not an FCC licensee, the Ordinance Administrator shall verify that the applicant holds executed leases from each FCC licensee proposing to locate wireless facilities at the site. If a copy of an FCC license has previously been supplied to the Ordinance Administrator in conjunction with an application for a wireless telecommunication facility, the Applicant may certify that such license remains valid in lieu of submitting an additional copy of such license.

**§ 115.23 ELECTROMAGNETIC EMISSIONS COMPLIANCE.**

Wireless telecommunication facilities shall at all times comply with FCC standards for radio frequency emissions.

**§ 115.24 LIABILITY INSURANCE.**

Prior to the issuance of a 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 wireless telecommunication 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 (not including any part of the foundation) have been removed and all other conditions of its Maintenance/Removal Agreement have been satisfied.

**§ 115.25 PUBLIC PROPERTY PREFERENCE.**

Applicants shall first be encouraged to consider properties owned by Haywood County, or instrumentalities thereof, before considering private properties as locations for wireless telecommunication facilities. Public properties shall be subject to the same restrictions and standards of appropriateness as private properties.

**§ 115.26 INSTALLATIONS UTILIZING EXISTING STRUCTURES.**

It is the policy of Haywood County to encourage use of existing structures and co-location. In furtherance of these policy objectives, wireless telecommunication facilities which do not require the placement or construction of a telecommunications tower, increases in tower height, or increases in height of alternative structures, and which otherwise meet the requirements of this chapter, shall enjoy a streamlined approval process. For purposes of this chapter, existing telecommunication towers or alternative structures requiring an increase in height to accommodate a wireless telecommunication facility shall be treated the same as applications for a new or additional telecommunication tower.

(A) Approval process. Applications for Special Use Permits for wireless telecommunication facilities which do not require a new or additional telecommunications tower, increases in tower height, or increases in height of alternative structures, may be approved by the Ordinance Administrator without public hearing. Applications shall be in a form and shall contain such information as required by this chapter and, in addition, such other information as the Ordinance Administrator shall deem necessary and appropriate. An application shall not be deemed complete until the application fee and maintenance/removal bond have been received by the County.

(B) Application fee. Payment of a \$500 nonrefundable application fee shall be required. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the application fee.

(C) Maintenance/Removal bond. An applicant for a Special Use Permit for a wireless telecommunication facility that does not include a new or additional telecommunication tower, or require an increase in tower height or heights of alternative structures, shall be required to post a \$5,000 cash bond, or other security satisfactory to the County, to secure the costs of maintaining the exterior appearance of the facility if the wireless provider fails to continually do so, or removing such facility in the event the applicant shall fail to do so within 90 days of abandonment or cessation of operation of the facility. The applicant shall be required to continue such bond or other security until such time as all above-ground portions of the facility (not including any part of the foundation) have been removed and all other requirements of its Maintenance/Removal Agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the maintenance/removal bond.

#### **§ 115.27 MAINTENANCE/REMOVAL AGREEMENT.**

An application for a Special Use Permit shall be accompanied by those portions of an executed copy of a lease requiring the applicant to remove all above-ground portions of wireless telecommunication facilities (not including any part of the foundation) no later than ninety (90) days after cessation of operations. In addition, each applicant for a wireless telecommunication facility Special Use Permit shall execute a standard facility maintenance/removal agreement prior to issuance of the 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 chapter 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 County 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 County and/or its agents to enter onto the property and undertake said work so long as the Ordinance Administrator has first provided the applicant the following written notices at the applicant's last known address:

(A) An initial compliance request identifying the work needed to comply with the agreement and providing the applicant at least thirty (30) days to complete the work; and

(B) A follow-up notice of default specifying the applicant's failure to comply with the work within the time period specified and indicating the County's intent to commence the required work within ten (10) days.

**§ 115.28 ABANDONMENT AND REMOVAL.**

Abandoned or unused wireless telecommunication facilities shall be removed as follows:

(A) All abandoned or unused wireless telecommunication facilities located above ground (not including any part of the foundation) shall be removed within ninety (90) days of the cessation of operations.

(B) In the event that all above ground portions of a wireless telecommunication facility (not including any part of the foundation) are not removed within ninety (90) days of the cessation of operations, the facility may be removed as provided in the applicant's Maintenance/Removal Agreement by the County and the costs of removal recovered from the applicant's bond or other security.

**§ 115.29 NONCONFORMING USES.**

Any wireless telecommunication facility in existence on the date of enactment of this chapter which does not comply in all respects with the provisions of this chapter shall be deemed a nonconforming use. Such pre-existing facilities may not be increased in height without complying with the provisions of this chapter. In the event such facility shall be destroyed, or suffer damage in excess of 50% of the tax value of the facility's improvements, such facility shall not be repaired or replaced and shall be removed unless any replacement facility complies in all respects with the provisions of this chapter. Except in the case of destruction or damage in excess of 50% of the tax value of the facility's improvements, technological upgrades of electronics and antennas are permitted.

***TELECOMMUNICATION TOWERS*****§ 115.40 APPLICATIONS FOR TELECOMMUNICATION TOWERS.**

In addition to the general requirements set forth in sections § 115.20 through § 115.29 above for wireless telecommunication facilities, applications for Special Use Permits for wireless telecommunication facilities requiring a new or additional telecommunications tower, increases in tower height, or increases in height of alternative structures, shall comply with the provisions of sections § 115.40 through § 115.52. Such applications shall be reviewed and processed in accordance with the following provisions:

(A) Approval process. Applications for telecommunications towers, increases in tower height, or increases in height of alternative structures, shall be submitted in writing to the Ordinance Administrator and shall contain all information required by this chapter as well as any additional information the Ordinance Administrator deems necessary and appropriate. A quasi-judicial public hearing shall be required before the Board of Commissioners before any decision to grant or deny an

application. Public notice of the application and hearing shall be in accordance with G.S. 160D-405-406 and the notice provisions set forth below.

(B) Application fee. Applications for a telecommunications tower Special Use Permit shall require payment of a nonrefundable \$2500 application fee. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the application fee.

(C) Retention of consultants. The County may elect to retain outside consultants or professional services to review the application and make determinations and recommendations on relevant issues including, but not limited to, verification of the applicant's due diligence, analysis of alternatives, and compliance with State and Federal rules and regulations at the applicant's sole expense (subject to a \$5,000 maximum). Any expense for consulting or professional services in excess of \$5,000 shall be borne equally by the applicant and the County. A \$5,000 cash bond, or other security satisfactory to the County, guaranteeing payment of such expenses shall be required. An application shall not be deemed complete until the application fee and bond or other security have been received by the County. The County shall require any consultants to disclose any potential conflicts of interest and to hold confidential any proprietary information supplied by the applicant. The Ordinance Administrator shall arrange an informal consultation with the applicant to review the consultant's report prior to any public hearing on the application. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.

(D) Maintenance and removal bond. An applicant for a Special Use Permit for a wireless telecommunication facility that includes a new or additional telecommunication tower, increases in tower height, or for increases in height of alternative structures, shall be required to post a \$10,000 cash bond, or other security satisfactory to the County, to secure the costs of removing all above ground portions of a wireless telecommunication facility (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. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.

(E) Public Notice. Notice of an application for a proposed telecommunication tower shall comply with the provisions of G.S. §160D-601 and, at a minimum, shall comply with the following:

(1) Newspaper notice. The Ordinance Administrator shall cause a notice of any public hearing to be published as a legal advertisement in a newspaper of general circulation in Haywood County once a week for two consecutive weeks, the first publication of which shall not appear less than ten (10) days or more than twenty-five (25) days prior to the date set for public hearing. The notice shall include the date, time, and place of the hearing as well as information about the proposed telecommunication tower including its type, height, location and any other information the Ordinance Administrator shall deem necessary or appropriate.

(2) Notice to affected property owners. The applicant shall mail notice to affected property owners in accordance with the following provisions, and shall provide the Ordinance Administrator with a signed certification of compliance listing the names, addresses and means of notification before any public hearing shall be conducted:

(a) Adjacent or abutting property owners. Notice of any public hearing shall be sent by certified mail (return receipt requested) to the owners of all parcels of land adjacent to or abutting the site of the proposed telecommunication tower at the last address listed for such owners in the County property tax records.

(b) Notice to other affected property owners. Notice to all other owners of properties within a one-quarter mile radius of the proposed telecommunication tower site shall be sent by first-class mail with proper postage affixed at the last address listed for such owners in the County property tax records.

(c) Timeliness of notice. Any notices required under the above subsections shall be mailed at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing.

(3) Posted notice. A sign advertising the application for a proposed telecommunication tower, and any scheduled public hearings, shall be posted by the Ordinance Administrator in a prominent location on or near the parcel containing the proposed telecommunication tower, or on a nearby public road. Such signs shall be posted at least ten (10) days prior to any public hearings.

(4) Additional notice regarding material changes. In the event the applicant shall seek to increase the height of a proposed telecommunication tower, or move its location more than fifty (50) feet laterally, from that stated in the original notices required above, additional notice shall be required to be given in accordance with the above provisions and all required time periods shall run from the date of supplemental notification.

(Ord. passed 2-23-98; Am. Ord passed 7-19-21)

#### **§ 115.41 APPLICANT’S BURDEN.**

The applicant for a telecommunications tower shall bear the burden of demonstrating by substantial evidence in a written record that a *bona fide* need exists for the proposed telecommunication tower and that no reasonable combination of locations, techniques or technologies will obviate the need for, or mitigate the height or visual impact of, the proposed telecommunications tower.

#### **§ 115.42 ELECTRIC TRANSMISSION TOWERS.**

It is the policy of Haywood County to encourage the use of electric transmission towers to deploy wireless infrastructure. In furtherance of that policy objective:

(1) No telecommunications tower shall be approved if an electric transmission tower is located above or no less than twenty-five (25) feet below the ground elevation of and within a one quarter mile radius (1320 feet) laterally of the proposed telecommunications tower site and if road access and necessary utilities can be obtained within a one quarter mile radius (1320 feet) of the existing electric transmission tower, unless the applicant can demonstrate that sufficient easements or other interests in real property cannot be obtained to accommodate the wireless telecommunication facility, or that the electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities.

(2) Electric transmission towers less than one hundred (100) feet in height may be replaced by pressure-treated wooden or metal electric transmission towers up to one hundred (100) feet in height. Such replacement shall be at the discretion of the electric utility which owns or operates the electric transmission tower, taking into account safety, service disruptions, structural capacity and structure life or duty cycle. For purposes of this chapter, such replacement electric transmission tower shall be deemed to be an existing structure.

**§ 115.43 PRESUMPTION FAVORING EXISTING STRUCTURES.**

A proposal for a new or additional telecommunication tower shall not be approved unless the Board of Commissioners finds that the equipment planned for the proposed tower cannot be accommodated on existing or approved towers, buildings or alternative structures more than thirty (30) feet in height (after first considering electric transmission towers) within a one-quarter mile search radius (1320 feet) of the proposed telecommunication tower site due to one or more of the following reasons:

(A) The planned equipment would exceed the structural capacity of the existing or approved tower, building or structures, as documented by a qualified and licensed North Carolina professional engineer, and the existing or approved tower, building or structure cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.

(B) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower, building or other structure as documented by a qualified and licensed North Carolina engineer and the interference cannot be prevented at a reasonable cost.

(C) Existing or approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed North Carolina professional engineer.

(D) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower, building or other structure.

**§ 115.44 TOWER HEIGHT LIMITATIONS.**

The height of any telecommunication tower shall be limited in accordance with the following provisions:

(A) Protected mountain ridges. Telecommunication towers located on a protected mountain ridge shall not exceed 100 feet in height and shall be subject to the following further limitations:

(1) Where the tower site is surrounded by a dense vegetative canopy within 100 feet of the tower site, the tower shall not extend more than thirty (30) feet higher than the average height of the vegetative canopy found within 500 feet of the site in the case of a single-user tower, or forty (40) feet higher in the case of a tower designed for the co-location of two or more wireless telecommunication facilities. The 100 foot maximum height may be exceeded to the extent necessary to allow these canopy clearances. If any antenna extends more than two feet from the side of the support structure, the portion of the tower extending above the vegetative canopy shall be camouflaged to appear like the top of a coniferous tree with all antennas concealed within simulated foliage.

(2) Where no vegetative canopy exists within 100 feet of the tower site, the maximum tower height shall be 60 feet. The entire tower shall be camouflaged like a coniferous tree, with all antennas concealed within simulated foliage, and the Board of Commissioners may require equipment enclosures to be placed underground or to be otherwise disguised or camouflaged to simulate structures that typically occur on landscapes similar to the proposed location.

(B) Towers visible from public roads or publicly-owned properties. Telecommunication towers that are visible from any public road, or publicly-owned property within a one-half mile radius of the proposed tower site (not including a publicly-owned parcel which is proposed as the site for the wireless facility), and which are not located on a protected mountain ridge, shall not exceed 80 feet in height, except:

(Ord. passed 2-23-98; Am. Ord. passed 11-30-98)

(1) Where the tower site is surrounded by a dense vegetative canopy within 100 feet of the tower site, the tower may extend sixty (60) feet higher than the average height of the vegetative canopy found within 500 feet of the site. If any antenna extends more than two feet from the side of the support structure, the portion of the tower extending above the vegetative canopy shall be camouflaged to appear like the top of a coniferous tree.

(Ord. passed 2-23-98; Am. Ord. passed 11-30-98)

(2) Telecommunication towers proposed for location within North Carolina Department of Transportation highway rights-of-way at or near highway interchanges, rest areas and weigh stations where two or more lighting towers exist within 500 feet of each other may be approved at a height greater than sixty (60) feet if the applicant demonstrates to the satisfaction of the Board of Commissioners that such telecommunication towers will simulate the lighting towers in height and appearance and will be clustered amidst the lighting towers so as to be unobtrusive. In no event shall such telecommunication towers exceed 100 feet in height.

(3) If any portion of a structure located within a North Carolina Department of Transportation right-of-way is used to mount cameras, instruments or sensors for governmental use, and the same structure supports or incorporates commercial wireless facilities, the governmental use shall be deemed incidental or accessory to the commercial use and the entire facility shall be treated as a commercial use for purposes of this chapter. Such structures shall be limited to sixty (60) feet in height unless they qualify as simulated lighting structures as provided above.

(4) Telecommunication towers that simulate objects that typically occur upon landscapes similar to the proposed location (except billboards, electrical transmission or telecommunication towers) may exceed sixty (60) feet in height if, in the opinion of the Board of Commissioners, the proposed structure would appear in context on the particular landscape, is aesthetically acceptable, and would be a preferable alternative to an undisguised telecommunication tower. In no event shall such telecommunication towers exceed 100 feet in height.

(C) Towers not visible from public roads or publicly-owned properties. Telecommunication towers that are not visible from any public road or publicly-owned property (not including a publicly-owned parcel which is proposed as the site of a wireless facility) within a one-half mile radius of the proposed tower site, and which are not located on a protected mountain ridge, shall not exceed 199 feet in height provided the type or height of the proposed structure, or its location, will not require painting or lighting under any FAA rule or regulation. The burden of demonstrating that a telecommunication tower is not visible from any of these vantage points shall be on the applicant.

#### **§ 115.45 PROTECTED FEDERAL LANDS.**

If a proposed telecommunication tower is to be located within one mile of Great Smoky Mountains National Park, the Appalachian Trail, or the Blue Ridge Parkway the applicant shall be required to submit a copy of its application to the appropriate Federal land manager for review and comment and shall provide a copy of its transmittal letter to the Ordinance Administrator to verify its compliance with this provision. The responsible Federal land manager shall have sixty days to review the application prior to its consideration by the Board of Commissioners.

#### **§ 115.46 CO-LOCATION REQUIREMENTS.**

To minimize cumulative visual impacts, it is the policy of Haywood County to encourage co-location of new wireless telecommunication facilities with existing and planned facilities whenever feasible and aesthetically desirable. All wireless telecommunications towers erected, constructed, or located within Haywood County shall comply with the following co-location requirements:

(A) A proposal for a new commercial wireless telecommunication tower shall not be approved unless the Board of Commissioners find that the telecommunications equipment planned for the proposed tower cannot be accommodated on existing or approved towers or alternative structures more than thirty (30) feet in height within a one-quarter mile search radius of the proposed location due to one or more of the following reasons:

(1) The planned equipment would exceed the structural capacity of the existing or approved towers, buildings or other structures, as documented by a qualified and licensed North Carolina professional engineer, and the existing or approved structure cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost;

(2) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost;

(3) Existing or approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed North Carolina professional engineer; or

(4) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower, building or other structures.

(B) Except in the case of a telecommunications tower on a protected mountain ridge, any proposed wireless telecommunication tower over sixty (60) feet in height shall be designed structurally, electrically, mechanically and in all respects to accommodate both the applicant's antennas and comparable antennas for at least one additional user. In the case of wireless telecommunication facilities placed on an electric transmission tower, co-location may not be required if the electric utility owning the tower determines that for structural, safety or operational reasons the tower cannot accommodate additional users. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

(C) Antennas or antenna arrays employed as part of a wireless telecommunication facility operated by a private business user, governmental user or commercial wireless service provider may not be co-located on a tower or other support structure used by an amateur radio operator.

(D) An application for a Special Use Permit for a wireless telecommunication facility requiring a new or additional telecommunications tower, increases in tower height, or increases in height of an alternative structure, shall not be deemed complete until the applicant provides a letter of intent agreeing to make all of its wireless telecommunication facilities (including existing facilities) within the jurisdiction of this chapter available to providers of functionally equivalent services at commercially reasonable rates. The Ordinance Administrator shall verify that the applicant has an executed lease for the property that allows the land owner and/or the permittee to enter into leases or subleases with other wireless service providers.

#### **§ 115.47 TOWER AND ANTENNA DESIGN REQUIREMENTS.**

No Special Use Permit shall be approved for a telecommunication tower, increase in tower height, or increase in height of an alternative structure, unless the Board of Commissioners finds that the design standards of this section have been met. Proposed or modified towers and antennas shall meet the following design requirements:

(A) Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment.

(B) Guyed towers are prohibited. Commercial wireless telecommunication towers shall be of a monopole design unless the Board of Commissioners determines that an alternative design would better blend in to the surrounding environment.

(C) Use of polarized antennas which electronically combine the functions of transmit and receive antennas (rather than spatial diversity antenna arrays which rely on antennas being physically separated) and dual-band/multi-band antennas (allowing two or more providers of different types of commercial wireless services to share a common antenna) is encouraged.

(D) Antennas shall be mounted on telecommunication towers so as to present the smallest possible silhouette, profile, or cross-section. Preferred antenna mounting scenarios are, in order of descending preference:

(1) compact polarized antennas in a cylindrical unicell arrangement less than 22 inches in diameter mounted atop the tower;

(2) panel antennas flush-mounted against the tower;

(3) antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.

(E) No telecommunication tower shall have constructed thereon, or attached thereto, in any way, any platform, catwalk, crow's nest, triangular framework, climbing devices, or like structures or equipment, except during periods of construction or repair. Curved or straight davit arms or brackets used for antenna mounting shall be connected to the tower at the base of the arms or brackets only and such arms or brackets (and any antennas or hardware mounted thereon) shall not be physically interconnected with any similar arm or bracket.

(F) All equipment enclosures and other improvements accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall be maintained in good appearance and repair. No equipment enclosure may exceed ten (10) feet in height. Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

(G) To the greatest extent possible, wireless telecommunication facilities shall be designed to survive a natural disaster without interruption in operation. Toward this end, the following measures shall be implemented:

(1) Non-flammable exterior wall and roof covering shall be used in the construction of equipment enclosures;

(2) Openings in all equipment enclosures shall be protected against penetration by fire and windblown embers;

(3) The telecommunication tower when fully loaded with antennas and other equipment and camouflaging shall be designed to withstand the forces expected during the “maximum credible earthquake.” All equipment mounting racks and equipment shall be anchored in such a manner that such a quake will not tip them over, throw equipment off shelves, or otherwise act to damage equipment; and

(4) Reasonable measures shall be taken to keep the facility operational in the event of a natural disaster or other catastrophe.

(H) Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages and for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.

(I) Telecommunication towers, equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight (8) feet in height. The fence may be topped with barbed wire. The Board of Commissioners may require as a condition of approval that the fencing be screened by appropriate landscaping or other means.

#### **§ 115.48 FALL ZONES AND SETBACKS.**

Towers shall conform with each of the following minimum setback requirements:

(A) A fall zone clear of any buildings on the parcel containing the tower site (other than equipment enclosures associated with the wireless telecommunication facility) equal to one-half the height of the tower shall be required. The fall zone shall have a minimum twenty-five (25) foot setback from all lot lines. If buildings (other than equipment enclosures associated with the wireless telecommunication facility) are located on an abutting property within a distance equal to the tower height, a combined fall zone and setback equal to the tower height shall be required.

(B) A tower’s setback may be reduced or its location in relation to a public street varied, at the sole discretion of the Board of Commissioners, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, electric transmission tower, or similar structure.

#### **§ 115.49 TOWER LIGHTING.**

(A) No tower shall be of a type or height, or placed in a location, that the Federal Aviation Administration would require the tower to be lighted or painted.

(B) Towers shall not be illuminated by artificial means and shall not display strobe lights or other warning lighting unless, in a particular instance, the Board of Commissioners requires a tower to be lit. The applicant shall be required to certify that the proposed telecommunication tower is not required to be painted or illuminated by any FAA rule or regulation.

(C) When incorporated into the approved design of a tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.

(D) A wireless telecommunication facility may utilize a security light controlled by a motion-detection sensor at or near the entrance to the facility.

**§ 115.50 SIGNAGE.**

Signage at any telecommunication tower site shall conform to the following provisions:

(A) A sign listing the name of the wireless telecommunication service provider operating the site, the site name or number and an emergency telephone number shall be posted at or near the entrance to the site so as to be readily visible to persons outside the site's security fencing.

(B) Equipment hazard warning and informational signs are permitted.

(C) The posting of any other signs or advertising is prohibited at any wireless telecommunication facility or upon any telecommunication tower.

**§ 115.51 SITE DEVELOPMENT PLANS.**

A site development plan shall be prepared by a North Carolina registered land surveyor, landscape architect or professional engineer and shall contain the following information:

(A) The name, address and telephone number of the applicant and the property owner, tax parcel identification number, scale, north arrow, a copy of the section of the 1:24,000 USGS quadrangle showing the proposed site and latitude and longitude coordinates.

(B) The name, address, telephone number, signature and seal of the professional preparing the site development plan.

(C) All identifiable structures located on the parcel, all private and public roads, highways and underground and overhead utilities.

(D) Surveyed boundary lines of the parcel containing the proposed telecommunication tower construction and its fall zone.

(E) All existing towers on the property or any towers whose fall zone encroaches onto the property.

(F) Description of adjacent land use and all property owner names, tax parcel numbers and mailing addresses.

(G) The ground elevation of the proposed tower's base, all proposed support structures, property corners, and a permanent site bench mark. All elevations shall be determined using the National Geodetic Vertical Datum of 1929 or other appropriate vertical datum.

(H) A preliminary tower design plan prepared by a registered North Carolina Registered Professional Engineer containing a plan depicting the tower and all proposed support structures, buildings and other improvements and access roads and utility connections within and to the proposed site. Such plan shall contain the following information:

1. The names, addresses and telephone numbers of the applicant and the property owner.
2. The plan scale, a North arrow and a vicinity map.
3. Tax parcel identification number for any parcel of land containing the tower site and the tower's latitude and longitude coordinates.
4. The name, address, signature and seal of the person who prepared the site plan.
5. The surveyed boundary lines of any parcel, or portion thereof, that will contain the proposed tower.
6. The general location of boundary lines of any parcel or portion thereof within a radius from the tower base equal to the proposed tower height.
7. The names and tax parcel identification numbers of all owners of property immediately adjacent to any parcel containing the tower site.
8. All identifiable buildings and other structures (including existing towers) roads and perennial streams located on the parcel containing the tower site and within a radius from the tower base equal to the tower height.
9. The tower base and the foundations for all support structures, all proposed buildings, accessory structures and any other proposed improvements, including roads and utilities serving the proposed site.
10. The ground elevation of the base of the proposed tower, to the nearest foot.
11. A structural engineering certification, signed and sealed by an active, registered North Carolina professional engineer, certifying the structural integrity of the tower and the tower base. The

Ordinance Administrator may accept, in lieu of the above, other documentation evidencing the structural integrity of the tower and the tower base.

**§ 115.52 TEMPORARY FACILITIES.**

Temporary wireless telecommunication facilities shall be permitted as follows:

(A) Temporary facilities may be placed at or near the location of an existing, proposed or approved wireless telecommunication facility for periods up to seventy-two (72) hours for equipment testing purposes or where the existing facility is unavailable due to scheduled or unscheduled maintenance.

(B) In the event of a natural disaster, catastrophic event or public emergency that either renders an existing wireless telecommunication facility unusable, or creates an urgent need for supplemental capacity to manage the emergency, temporary facilities may be placed for periods of up to one week. Permits for the temporary facilities may be extended for successive one week periods for the duration of the emergency as determined by the Ordinance Administrator.

(C) Permits may be issued for up to one week for temporary facilities needed in conjunction with scheduled special events at specific locales that are likely to generate a need for additional capacity at the event which is expected to exceed existing installed capacity.

(D) Permits for temporary facilities shall be issued by the Ordinance Administrator upon proof of eligibility and payment of a \$50 permit fee.

***MODIFICATIONS TO APPROVED FACILITIES***

**§ 115.70 MINOR MODIFICATIONS.**

Minor modifications shall include:

(A) The addition, removal, repositioning (other than downtilt adjustments), alteration or other change in the number or type of antennas employed in a wireless telecommunication facility by a single permittee if, in the opinion of the Ordinance Administrator, such changes do not result in a significant increase in the facility's silhouette or other substantial visual or aesthetic impacts, or:

(B) Increases in the number or size of equipment enclosures of a single permittee which do not increase the footprint of such equipment by more than 20%.

**§ 115.71 MAJOR MODIFICATIONS.**

Major modifications shall include:

(A) Increases in the height, size, shape or appearance of a telecommunication tower other than minor modifications as defined above; or

(B) Other modifications by a single permittee which, in the opinion of the Ordinance Administrator, substantially exceed the scope of any approval of a facility or which will result in a substantial increase in aesthetic or visual impacts.

(C) Placement of an additional wireless telecommunication facility operated by a different entity than the permittee on an existing structure that does not require an increase in height of the support structure shall be processed in accordance with section § 115.20 through § 115.29 of this chapter.

**§ 115.72 PROCESSING AND FEES.**

Applications for a minor modification to a wireless telecommunication facility shall be in a form and contain such information as the Ordinance Administrator shall deem necessary and appropriate and shall be accompanied by a \$100 fee. Minor modification permits may be issued by the Ordinance Administrator. Major modifications require the approval of the Board of Commissioners and shall be processed in accordance with the provisions of section § 115.20 through § 115.29 or section § 115.40 through § 115.52 of this chapter for new wireless telecommunication facilities or telecommunication towers, as appropriate.

***ANNUAL PERMITS*****§ 115.75 ANNUAL PERMIT REQUIRED.**

An annual Wireless Telecommunication Facility Permit shall be required for each wireless telecommunication facility within the jurisdiction of this chapter. Applications for an annual Wireless Telecommunications Facility Permit shall include such technical information about the facility as the Ordinance Administrator deems reasonable and appropriate. Such information shall be in a form designated by the Ordinance Administrator.

**§ 115.76 APPLICANT'S CERTIFICATIONS.**

Before an annual Wireless Telecommunication Facility Permit shall be issued or renewed, the applicant must certify that:

(A) It currently holds an FCC license to provide commercial wireless services and that such license is in good standing or, if the permittee is not an FCC licensee, that the license of each of its FCC tenants is in good standing.

(B) The wireless telecommunication Facility continues to be operated by the applicant and that it has a continuing need for the facility to meet the requirements of its FCC license.

(C) That the facility complies with all FCC rules and regulations currently in effect relating to environmental effects of electromagnetic radiation.

(D) That the facility as currently constructed, maintained or operated is in compliance with all FAA rules and regulations.

(E) That the applicant currently has liability insurance in force covering the wireless telecommunication facility in an amount deemed adequate by the Ordinance Administrator.

(F) That the applicant has not constructed, maintained, modified or operated any wireless telecommunication facility within the jurisdiction of this chapter without the approval of Haywood County or, if it has done so, that it has ceased operating and has removed all above-ground portions of such facilities (not including any part of the foundation).

(G) That any bond or other security to secure removal of the wireless telecommunication facility remains in full force and effect and that the applicant is in full compliance with its Maintenance/Removal Agreement and other terms and conditions of its Special Use Permit. Nonconforming telecommunication towers in existence on the date of enactment of this chapter shall be exempt from certifications with respect to Maintenance/Removal Agreements and bonds or other security therefor.

**§ 115.77 ANNUAL PERMIT FEE.**

Payment of a \$150 fee shall be required before an annual Wireless Telecommunication Facility Permit shall be issued. Such fees may be adjusted from time to time by resolution of the Board of Commissioners. Permits shall be issued for calendar years beginning with 1998. Permit fees shall not be pro-rated. Persons operating wireless telecommunication facilities on the effective date of this chapter shall have sixty (60) days from the effective date to comply with the permit requirement. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the fee.

**§ 115.78 COMPLIANCE.**

Failure to obtain an annual permit for a wireless telecommunication facility within sixty (60) days after the commencement of the annual permit period shall result in the wireless telecommunication facility being deemed abandoned and subject to removal by the County at the expense of the owner or

operator thereof, with such expenses to be recovered in accordance with the applicant's Maintenance/Removal Agreement, as well as subjecting the responsible person(s) to any other penalties set forth in this chapter.

### ***VARIANCES***

#### **§ 115.80 VARIANCES.**

Variations are to be discouraged, strictly construed against the applicant, and are only to be granted in extraordinary circumstances. The burden shall be on the applicant for a variance to overcome a presumption that variations should not be granted. Variations shall only be granted according to the following:

(A) Governmental users. Governmental users which operate wireless telecommunication facilities for public service, public safety or administrative purposes may be granted a variance if the restrictions and limitations contained in this chapter impose constraints that are contrary to the public interest. The burden shall be on the governmental user to demonstrate to the satisfaction of the Board of Commissioners that it cannot serve the public interest within the constraints of this chapter. Any variance granted to a governmental user shall be the minimum required to accomplish its public service mission.

(B) Non-governmental providers. In order to qualify for a variance, private business users and commercial wireless providers must demonstrate to the satisfaction of the Planning Board and the Board of Commissioners that unique technical reasons not shared by other providers of functionally equivalent services prohibit their ability to provide personal wireless services. In order to be granted a variance, applicants must demonstrate that no combination of locations, techniques or technologies generally known in the industry, can resolve their technological deficiency at a reasonable cost.

(C) Exceptions. The Board of Commissioners may grant a variance in a particular instance when, in its opinion, a proposed variance would result in further mitigation of adverse visual and other environmental impacts than would otherwise be possible. Hearings on variance requests shall be conducted in accordance with G.S. Chapter 160D-406. When conducting the hearing, the Board shall be governed by the conflict-of-interest provisions of G.S. 160D-109.  
(Ord. passed 2-23-98; Am. Ord passed 7-19-21)

#### **§ 115.81 PUBLIC HEARING AND NOTICE.**

Any person requesting a variance from the terms of this chapter shall submit a written request for a variance justifying the request to the Ordinance Administrator. The Ordinance Administrator may request the applicant to supply such additional information as he or she deems necessary before forwarding the request, together with any staff recommendations, to the Board of Commissioners. A

quasi-judicial public hearing before the Board of Commissioners shall be required on any request for a variance in accordance with G.S. 160D-406. Public notice of the variance request and public hearing shall be in accordance with section § 115.40(E) of this chapter.  
(Ord. passed 2-23-98; Am. Ord passed 7-19-21)

**MISCELLANEOUS PROVISIONS**

**§ 115.90 PENALTIES.**

In addition to the penalties and other provisions for the revocation of any Special Use Permit set forth in this chapter, any person who violates this chapter shall be subject to the penalties, enforcement provisions, and other equitable, civil ~~and criminal~~ remedies provided in G.S. § 153A-123.  
(Ord. passed 2-23-98; Am. Ord. passed 1-3-22)

**§ 115.91 VALIDITY OF INDIVIDUAL SECTIONS.**

If any clause, sentence, provision or section of this chapter is for any reason held to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining clauses, sentences, provisions or sections of this chapter. It is hereby declared to be the intent of the Board of County Commissioners that the remaining provisions of this chapter would have been adopted had such unconstitutional, illegal or invalid clause, sentence, provision or section not been included in this chapter.

**§ 115.92 HEADINGS AND CAPTIONS.**

Headings and captions are inserted for convenience only and shall not effect any interpretation of this Agreement.

**§ 115.93 EFFECTIVE DATE, REPEALERS AND REVIVAL OF MORATORIUM.**

The County Board of Commissioners declares that this is a public emergency ordinance necessary for the protection of public health, safety, and welfare and shall be effective upon adoption. Upon the effective date of this chapter, the moratorium upon the issuance of permits for wireless telecommunication facilities established by resolution on June 16, 1997 is repealed provided, however, that if this chapter or any clause, sentence, provision or section in this chapter is held to be unconstitutional, invalid or void for any reason, the moratorium established on June 16, 1997 shall be immediately reinstated for a period of six months to allow the County time to formulate and pass new regulations.

Adopted and effective February 23, 1998.

**§ 115.94 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 115 originally adopted February 23, 1998, and all subsequent amendments, and shall be effective on and after January 3, 2022~~July 19, 2021~~.

## CHAPTER 116: ADULT ENTERTAINMENT ESTABLISHMENTS

### Section

- 116.01 [Definitions](#)
- 116.02 [General provisions](#)
- 116.03 [Purpose](#)
- 116.04 [Jurisdiction](#)
- 116.05 [Application for licenses](#)
- 116.06 [Application procedures](#)
- 116.07 [Prohibited acts and conduct](#)
- 116.08 [Inspections](#)
- 116.09 [Suspension or revocation of licenses](#)
- 116.10 [License renewal](#)
- 116.11 [Transfer of license](#)
- 116.12 [Locational restrictions](#)
- 116.13 [Non-conforming use](#)
- 116.14 [Additional regulations for adult motels](#)
- 116.15 [Additional regulations for escort agencies](#)
- 116.16 [Additional regulations for nude model studios](#)
- 116.17 [Regulations pertaining to exhibition of sexually explicit films, videos, and live performances](#)
- 116.18 [Exterior portions of sexually oriented businesses](#)
- 116.19 [Signage](#)
- 116.20 [Massages or baths administered by a person of the opposite sex](#)
- 116.21 [Hours of operation](#)
- 116.22 [Exemptions](#)
- 116.23 [Notices](#)
- 116.24 [Injunction](#)
- 116.25 [Conflicting ordinances repealed](#)

### ***Statutory reference:***

*Authority to regulate sexually oriented businesses, see G.S. §160A-181.1*

### **§ 116.01 DEFINITIONS.**

The following words, terms and phrases shall have the specific meaning ascribed to them herein. All other words, terms and phrases shall have their chapter meaning of common usage in the English language:

***ADULT BOOKSTORE.*** A bookstore:

(1) Which receives a majority of its gross income during a calendar month from the sale or rental of publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; or

(2) Having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section.

***ADULT CABARET.*** A nightclub, bar, restaurant, or similar commercial establishment that on a regular or transient basis features:

(1) Persons who appear in a state of nudity or semi-nudity; or

(2) Live performances that are characterized by the exposure of "specified anatomical areas" or "specified sexual activities;" or

(3) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" or

(4) Persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

***ADULT ESTABLISHMENT.*** An adult bookstore, adult cabaret, adult motel, adult motion picture theater, adult mini-motion picture theater, escort agency, exotic car wash, exotic maid service, nude modeling studios, sexual encounter center or any other sexually oriented business that is similar in nature or intent to any other adult entertainment business as defined in this section.

***ADULT LIVE ENTERTAINMENT.*** Any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.

***ADULT LIVE ENTERTAINMENT BUSINESS.*** Any establishment or business wherein adult live entertainment is shown for observation by patrons. This shall apply whether the entertainment is presented on a regular or transient basis.

**ADULT MOTEL.** A hotel, motel or similar commercial establishment that:

(1) Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right-of-way that advertises the availability of this adult type of photographic reproductions; or

(2) Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.

**ADULT MOTION PICTURE THEATER.** An enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, for observation by patrons therein. "Adult motion picture theater" does not include any adult mini-motion picture theater as defined in this section.

**ADULT MINI-MOTION PICTURE THEATER.** An enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons therein.

**EMPLOYEE.** A person who performs any service on the premises of a sexually oriented business on a full-time, part-time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

**ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS.** The increase in floor areas occupied by the business by more than ten (10) percent, as the floor areas exist on August 10, 1998.

**ESCORT.** A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person and whose advertisements, promotions, or obvious intent to the public is sexual in nature.

**ESCORT AGENCY.** A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other

consideration and whose advertisements, promotions, or obvious intent to the public is sexual in nature.

**ENTERTAINER.** Any person who provides entertainment within or at an adult establishment, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided by that person as an employee or an independent contractor.

**EROTIC.** Any seductive, titillating, lustful, immodest, indecent, suggestive, passionate, or similar reference, act, service or deed.

**ESTABLISHMENT.** Includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The additions of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

**EXOTIC CAR WASH.** A facility that offers a car cleaning or washing service performed by employees that are in a state of nudity or semi-nudity.

**EXOTICA MAID SERVICE.** Any cleaning service for a residence or business where the employee is in a state of nudity or semi-nudity.

**LICENSED DAY-CARE CENTER.** A facility licensed by the state of North Carolina, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

**LICENSEE.** A person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

**NUDE MODEL STUDIO.** Any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

**NUDITY OR A STATE OF NUDITY.** The appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than fully opaque

covering; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

**ORDINANCE ADMINISTRATOR.** The person charged with administering and enforcing this Chapter.

**PERSON.** An individual, proprietorship, partnership, corporation, association, or other legal entity.

**PREMISES.** The real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to § 116.05 of this chapter.

**SEMI-NUDE.** The appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, other wearing apparel provided the areola is not exposed in whole or in part.

**SEXUAL ENCOUNTER CENTER.** A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite or same sex; or
- (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

**SEXUALLY ORIENTED DEVICES.** Without limitation, any artificial or simulated specified anatomical area or their device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.

**SPECIFIED ANATOMICAL AREAS.**

- (1) Less than completely and opaquely covered:
  - (a) Human genitals, pubic region,
  - (b) Buttock or
  - (c) Female breast below a point immediately above the top of the areola; or

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

***SPECIFIED SEXUAL ACTIVITIES.***

- (1) Human genitals in a state of sexual stimulation or arousal,
- (2) Acts of human masturbation, sexual intercourse or sodomy; or
- (3) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

***SEXUALLY ORIENTED BUSINESS.*** Any business or enterprises that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities as specified in N.C.G.S. 14-202.10. This term may be used interchangeably with "adult establishment."

***TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS.*** Includes any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for the transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.  
(Ord. passed 8-10-98)

**§ 116.02 GENERAL PROVISIONS.**

(A) *Effective date.* This chapter shall take effect and be in force from and after August 10, 1998.

(B) *Amendment.* The Board of Commissioners may from time to time amend the terms of this chapter after a public hearing, but no amendment shall become effective unless it shall have been proposed by, or shall have been submitted to, the Planning Board for review and recommendation.

(C) *Administrative review.* Administrative review of any violation issued by the Ordinance Administrator under this chapter may be appealed to the Haywood County Board of Commissioners within ten working days of the decision rendered by the Ordinance Administrator. The appeal must be in writing and state the reasons for such appeal. A request for a variance must be submitted to the Haywood County Board of Commissioners in writing.

(D) *Administrator.* The Haywood County Planner or designee is designated a public official of the county and shall administer and enforce this chapter.

(E) *Statutory Reference.* This chapter is enacted in part pursuant to the authority contained in N.C.G.S. 160A-181.1, "Regulation of Sexually Oriented Businesses."  
(Ord. passed 8-10-98)

**§ 116.03 PURPOSE.**

The purpose of this Chapter shall be to set forth the regulatory and licensing requirements for adult establishments located within Haywood County. Adult establishments, because of their very nature, are recognized as having serious objectionable operational characteristics. Studies and experiences that are relevant to North Carolina have shown that lower property values and increased crime rates tend to accompany and are brought about by adult establishments. The Board of County Commissioners finds that regulation of these uses is necessary to ensure that these adverse secondary effects do not contribute to the blighting of surrounding neighborhoods and to regulate acts, omissions or conditions detrimental to the health, safety or welfare and the peace and dignity of the County. Regulation to achieve these purposes can be accomplished by the procedures set forth hereinafter.

The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. This Chapter represents a balancing of the legitimate ends of the community by imposing an incidental, content neutral place, time and manner regulation of sexually oriented businesses, without limiting alternative avenues of communication and at the same time, requiring the business to carry its share of financing administrative and enforcement activities.  
(Ord. passed 8-10-98)

**§ 116.04 JURISDICTION OF ORDINANCE.**

The provisions of this Chapter shall be applicable to all unincorporated areas of Haywood County, but shall not be applicable to and shall not be enforced within the corporate limits of jurisdiction of any municipality in the County.  
(Ord. passed 8-10-98)

**§ 116.05 APPLICATION FOR LICENSES.***(A) Business license.*

(1) It shall be unlawful for any person to operate or maintain an adult establishment in the County unless the owner or operator thereof has obtained an adult establishment license from the County. It shall also be unlawful for any person to operate such business after such license has been revoked or suspended by the County or has expired.

(2) It shall be unlawful for any entertainer to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed adult establishment within the County.

(3) It shall be prima facie evidence that any adult establishment that fails to have posted, in the manner required by this Chapter, an adult establishment license, has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer who performs any service or entertainment in an adult establishment in which an adult establishment license is not posted, in the manner required by this Chapter, had knowledge that such business was no licensed.

*(B) License Classification and Fees.*

(1) The term of all licenses required under this Chapter shall be for a period of 12 months, commencing on the date of issuance of the license. This application for a license shall be accompanied by payment in full of the fees referred to in this Chapter and established by the Board of Commissioners. Payment shall be made by certified or cashier's check or money order. No application shall be considered complete until all such fees are paid.

(2) All licenses shall be issued for a specific location and/or person and shall be nonrefundable and nontransferable.

(3) The license fees shall be as set by the Board of Commissioners from time to time and be recorded in the County Board of Commissioner Meeting Minutes at which they are set.  
(Ord. passed 8-10-98)

**§ 116.06 APPLICATION PROCEDURES.**

*(A) Adult establishment business license.* All persons desiring to secure a license to conduct, operate or maintain an adult establishment under the provisions of this Chapter shall make a verified application to the Ordinance Administrator. All applications shall be submitted in the name of the person proposing to conduct, operate or maintain the adult establishment. All applications shall be submitted on a form supplied by the enforcement officer and shall require the following information:

(1) The applicant's full name and any aliases or other names by which the applicant is known or which the applicant has used at any time, and the residence addresses for the past two

years, the business and home telephone numbers, occupation, date and place of birth, social security number, drivers license number, and a recent photograph of the applicant.

(2)

(a) The name of the adult establishment, a description of the adult entertainment to be performed on the licensed premises, the name of the owner of the premises where the adult establishment will be located, the business address and Haywood County parcel identification number on which the business resides.

(b) If the persons identified as the fee owner(s) of the tract of land in item (a) is/are not also the owner(s) of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the adult establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the purpose of the operation of an adult establishment.

(c) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented business within 1,320 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, library, or public park or recreation area within 1,320 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(d) Any of the criteria above shall not be required for a renewal application if the applicant states that the documents previously furnished the Ordinance Administrator with the original application or previous renewals thereof remain correct and current.

(3) The names, residence addresses for the past two years, social security numbers and dates of births of all partners, if the applicant is a partnership; and if the applicant is a corporation, the same information for all corporate officers, directors, and individuals having a ten (10) percent or greater interest in the corporation.

(4) A statement from the applicant, or from each partner, or from each corporate officer, director, or ten (10) percent shareholder that each such person has not been convicted or, released from confinement for conviction of, or diverted from prosecution on:

(a) A felony criminal act within five years immediately preceding the application, or

(b) A misdemeanor criminal act within two years immediately preceding the application where such felony or misdemeanor criminal act involved sexual offenses, prostitution, promotion of prostitution, sexual abuse of a child, pornography or related offenses as defined in the laws of North Carolina or any other comparable violation of the laws of this state or the laws of any other state.

(5) If the applicant is a corporation, a current certificate of existence issued by the North Carolina Secretary of State.

(6) A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of this Chapter regulating adult establishments.

(7) All applicants shall submit to fingerprinting by a Haywood County Sheriffs Deputy. The fingerprint cards shall be submitted to the S.B.I. for processing. Returned fingerprint cards and criminal histories shall be kept on file in the Haywood County Sheriffs Office.

(8) A statement signed under oath that the applicant(s) consents to investigation of his/her background by the County to include fingerprinting and that the applicant(s) agrees to furnish within ten days at his/her expense, a criminal history from the Clerk of Court of any county in which the applicant has resided during the five (5) preceding years.

Failure to provide the information and documentation required by this subsection shall constitute an incomplete application and it shall not be processed until complete.

(B) *Adult entertainer license.* All persons desiring to secure a license under the provisions of this Chapter to be an entertainer shall make a verified application to the Ordinance Administrator. All applications shall be made in person to the Ordinance Administrator or his designee. All applications shall be submitted on a form supplied by the enforcement officer and shall require the following information:

(1) The applicant's full name and any aliases or other names by which the applicant is known or which the applicant has used at any time, and the residence addresses for the past two years, the business and home telephone numbers, date and place of birth, social security number, drivers license number, and any stage names or nicknames used in entertaining.

(2) The name and address of the adult establishment where the applicant intends to work as an entertainer.

(3) A statement from the applicant that the applicant has not been convicted of, released from confinement for conviction of, or diverted from prosecution on:

(a) A felony criminal act within five years immediately preceding the application, or

(b) A misdemeanor criminal act within two years immediately preceding the application where such felony or misdemeanor criminal act involved sexual offenses, prostitution, promotion of prostitution, sexual abuse of a child, pornography or related offenses as defined in the laws of the State of North Carolina or any other comparable violation of the laws of this state or the laws of any other state.

(4) Photographs shall be taken of the applicant by the Ordinance Administrator or his designee and the Ordinance Administrator shall have the photographs processed and retain the copies.

(5) All applicants shall submit to fingerprinting by a Haywood County Sheriffs Deputy. The fingerprint cards shall be submitted to the S.B.I. for processing. Returned fingerprint cards and criminal histories shall be kept on file in the Haywood County Sheriffs Office.

(6) The applicant shall present to the Ordinance Administrator for copying documentation that the applicant has attained the age of 21 years at the time the application is submitted. Any of the following shall be accepted as documentation of age:

(a) A motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth.

(b) A state-issued identification card bearing the applicant's photograph and date of birth;

(c) An official and valid passport issued by the United States of America;

(d) An immigration card issued by the United States of America;

(e) Any other form of picture identification issued by a governmental entity that is deemed reliable by the Ordinance Administrator; or

(f) Any other form of identification deemed reliable by the Ordinance Administrator.

(7) A statement signed under oath that the applicant consents to investigation of his/her background by the County to include fingerprinting and that the applicant agrees to furnish within ten days at his/her expense, a criminal history from the Clerk of Court of any county in which the applicant has resided during the five (5) preceding years.

Failure to provide the information and documentation required by this subsection shall constitute an incomplete application and it shall not be processed until complete.

(C) *Application processing.* Upon receipt of a complete application for an adult establishment license or for an entertainer license, the Ordinance Administrator shall immediately commence investigation of the application as follows:

(1) In the case of an application for a license for an adult establishment, the Ordinance Administrator shall:

(a) Transmit a copy of the application to the County Manager, the Board of County Commissioners, the County Planner and the Director of the Inspections Department.

(b) The County Planner and the Director of the Inspections Department shall report to the Ordinance Administrator and the County Manager no later than 15 working days after the receipt of the application by the Ordinance Administrator whether or not a proposed adult establishment complies with the requirements of this Chapter and all applicable building, fire, health or similar State or local code(s). In the event that the County Planner and the Director of the Inspections Department fail to report to the Ordinance Administrator within this time period, the Ordinance Administrator shall proceed with processing the application.

(c) The County Sheriff shall report to the Ordinance Administrator no later than 15 working days after the receipt of the application by the County Sheriff the results of his/her investigation of the applicant. In the event that the County Sheriff fails to report to the Ordinance Administrator within this time period, the Ordinance Administrator shall proceed with processing the application.

(d) Upon completion of his/her investigation, payment of the applicable license fee, and upon receipt of the report of the County Planner, Director of the Inspections Department and County Sheriff (or upon expiration of the time periods referenced above without receiving a report), the Ordinance Administrator shall determine whether or not a license shall be issued. In no event shall the time period for determination by the Ordinance Administrator exceed 45 working days from the date the application is received by the Ordinance Administrator, unless consented to by the applicant.

(2) In the case of an application for a license for an entertainer, the Ordinance Administrator shall:

(a) Transmit a copy of the application to the County Sheriff.

(b) The County Sheriff shall report to the Ordinance Administrator no later than 10 working days after receipt of the application by the County Sheriff the results of his/her investigation of the applicant. In the event that the County Sheriff fails to report to the Ordinance Administrator within this time period, the Ordinance Administrator shall proceed with processing the application.

(c) Upon completion of his/her investigation, payment of the appropriate license fee, and upon receipt of the report of the County Sheriff (or upon expiration of either or both time periods referenced above without receiving a report), the Ordinance Administrator shall determine whether or not a license shall be issued. In no event shall the time period for determination by the Ordinance Administrator exceed 15 working days from the date the application is received by the Ordinance Administrator, unless consented to by the applicant.

(D) *Reasons for disapproval.* The Ordinance Administrator must deny the license application for one or more of the following reasons:

(1) The license application is incomplete so as to not contain all information required by this Chapter.

(2) The applicant (including any partners, corporate officers, directors, and shareholders where applicable), has been convicted of a crime in the local, state or federal court systems for any violations listed in this section.

(3) The applicant (including any partners, corporate officers, directors, and shareholders where applicable), has made false or fraudulent statements in the application, evidence of which is disclosed by a County background investigation or by any other lawful means.

(4) The application for an adult establishment does not meet the requirements of this Chapter.

(E) *Notice of approval or disapproval.*

(1) Upon a determination by the Ordinance Administrator of the disapproval or approval of the application, the Ordinance Administrator shall notify the applicant by personal delivery or certified mail, return receipt requested, to the address of the applicant as shown on the application. In the event that the application is disapproved, the notification shall state the basis for such disapproval.

(2) In the event an application is disapproved, the applicant shall have 30 days from the receipt of the notice of disapproval to appeal that determination in writing and citing reasons for such appeal to the Haywood County Planning Board.

(F) *Changes to application.* All applicants shall notify the Ordinance Administrator of any changes to the application within five working days of the date the change occurs.  
(Ord. passed 8-10-98)

**§ 116.07 PROHIBITED ACTS AND CONDUCT.**

(A) No person under the age of 21 years shall be permitted on the premises of any adult establishment.

(B) No person under the age of 21 years shall be granted a license for an adult establishment business or as an entertainer.

(C) No owner, operator, manager, employee or entertainer, nor any customer or patron, shall appear "bottomless" or in a state of nudity while on the premises of the adult establishment.

(D) No owner, operator, manager, employee or entertainer, nor any customer or patron, shall perform any specified sexual activities as defined in this Chapter, wear or use any device or covering exposed to view which simulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any of the specified sexual activities as defined in this Chapter, or participate in any act of prostitution while on the premises of the adult establishment.

(E) No owner, operator, manager, employee, entertainer, customer or patron of an adult establishment shall knowingly touch, fondle or caress any specified anatomical area of another person, or knowingly permit another person to touch, fondle or caress any specified anatomical area of his or hers, whether such specified anatomical areas are clothed, unclothed, covered or exposed, while on the premises of the adult establishment.

(F) There shall be a minimum separation of 24 inches between any entertainer or performer and any patron or customer.

(G) No owner, operator, manager or employee shall mix, dispense, or serve any alcoholic beverage while in a state of nudity or semi-nudity.

(H) No owner, operator, manager or employee shall solicit, receive, or accept nor shall any customer or patron give, offer, or provide any gratuity, tip, payment or any other form of compensation for entertainment for or while either or both is/are in a state of nudity or semi-nudity. This also pertains to the purchase of an unrelated item that includes a "free" dance, act or service.

(I) No owner, operator, manager or other person in charge of the premises of an adult entertainment premises shall knowingly allow or permit any person under the age of 21 years to be in or upon the premises or knowingly allow or permit a violation of this Chapter.  
(Ord. passed 8-10-98)

#### **§ 116.08 INSPECTIONS.**

(A) Every person, corporation or partnership licensed under this Chapter as an adult establishment shall post such license in a conspicuous place and manner of the adult establishment premises.

(B) Every person holding a license as an entertainer shall post his or her license in his or her work area on the adult establishment premises so it shall be readily available for inspection by County authorities responsible for enforcement of this Chapter.  
(Ord. passed 8-10-98)

#### **§ 116.09 SUSPENSION OR REVOCATION OF LICENSES.**

(A) The Ordinance Administrator shall conduct a hearing to determine whether or not a license should be suspended or revoked, with the hearing conducted within ten working days of his/her knowledge that:

(1) The owner or operator of an adult establishment or the holder of a license as an entertainer has violated, or knowingly allowed or permitted the violation of any of the provisions of this Chapter; or

(2) There have been recurrent violations of provisions of this Chapter that have occurred under such circumstances that the owner or operator of an adult establishment knew or should have known that such violations were committed; or

(3) The license was obtained through false statements in the application for such license, or renewal thereof; or

(4) The license has been materially altered or defaced or is being or was used by a person other than the license holder or at a location other than that identified on the license or for a use or type other than that for which the license was issued; or

(5) The licensee failed to make a complete disclosure of all information in the application for such license, or renewal thereof; or

(6) The owner or operator, or any partner, or any corporate officer or director holding an adult establishment license has become disqualified from having a license by a conviction as provided in this Chapter; or

(7) The holder of an entertainer license has become disqualified from having a license by a conviction as provided in this Chapter.

(B) At the hearing, the licensee shall have an opportunity to be heard, to present evidence and to be represented by an attorney. Based on the evidence produced at the hearing, the Ordinance Administrator shall take, within five working days after the hearing, any of the following actions:

(1) Suspend the license for up to 90 days; or

(2) Revoke the license; or

(3) Place the license holder on administrative probation for a period of up to one year, on the condition that no further violations of this Chapter occur during the period of probation; or

(4) Take no action.

(C) The Ordinance Administrator shall provide written notice of his/her decision to the applicant by certified mail, return receipt requested. The notice shall be sent immediately after the Ordinance Administrator determines what action to take, as described above.

(D) In the event of suspension or revocation of the license or the placement on administrative probation, the licensee shall have the right to appeal that determination to the Haywood County Board of Commissioners within 30 days of receipt of the notice of suspension, revocation or probation.

(Ord. passed 8-10-98)

**§ 116.10 LICENSE RENEWAL.**

(A) A license may be renewed by making application to the Ordinance Administrator on application forms provided for that purpose. Any license issued under this Chapter shall expire as of the end of the 12 month period from the date of its issuance, and renewal applications for such licenses shall be submitted no sooner than 45 days prior to expiration and no later than the county business day immediately preceding the date of expiration of the license.

(B) Upon timely and proper application for renewal and the payment in full of the license fee, the Ordinance Administrator shall issue to the applicant a receipt showing the date of the renewal application and granting to the applicant a temporary extension of the license for a period of 45 days or until the application for renewal is approved or disapproved. Any license issued under the provisions of this Chapter may be renewed by issuance of a new license for an additional 12 month period. All applications for renewal of license shall be processed in the manner provided for the issuance of the initial license.

(Ord. passed 8-10-98)

**§ 116.11 TRANSFER OF LICENSE.**

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

(Ord. passed 8-10-98)

**§ 116.12 LOCATIONAL RESTRICTIONS.**

Sexually oriented businesses are permitted in Haywood County provided that:

(A) The sexually oriented business may not be located or operated within 1,320 feet of:

- (1) A church, synagogue or house (regular place) of worship;
- (2) A public or private elementary or secondary school;
- (3) A public library;
- (4) A single-family, two-family or multi-family dwelling;
- (5) A public park or playground;
- (6) A licensed day-care center;
- (7) An entertainment business that is oriented primarily towards children;

(8) Another sexually oriented business.

(B) For the purpose of this Chapter, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of any use listed in § 116.12(A).

(Ord. passed 8-10-98)

**§ 116.13 NON-CONFORMING USE.**

Any non-conforming use existing at the time of adoption of this chapter may not be enlarged, expanded or altered in any way without complying with the provisions of this chapter.

(Ord. passed 8-10-98)

**§ 116.14 ADDITIONAL REGULATIONS FOR ADULT MOTELS.**

(A) Evidence that a sleeping room in a hotel, motel, or similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this chapter.

(B) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(C) For purposes of § 116.14(B), the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(Ord. passed 8-10-98)

**§ 116.15 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.**

(A) An escort agency shall not employ any person under the age of 21 years.

(B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 21 years.

(Ord. passed 8-10-98)

**§ 116.16 ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.**

(A) A nude model studio shall not employ any person under the age of 21 years.

(B) A person under the age of 21 years is in violation of this Chapter if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 21 years was in a restroom not open to the public view or visible by any other person.

(C) It is a violation of this Chapter if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

(D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.  
(Ord. passed 8-10-98)

### **§ 116.17 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS, AND LIVE PERFORMANCES.**

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, other video reproduction, or live performance that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designed street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Ordinance Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Ordinance Administrator or his designee.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designed, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in § 116.17(5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to § 116.17(1).

(7) No viewing room may be occupied by more than one person at any time.

(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candle as measured at the floor level.

(9) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(10) No licensee shall allow an opening of any kind to exist between viewing rooms or booths.

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(12) The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.

(B) A person having a duty under §§ 116.17(1) through 116.17(14) is in violation of this chapter if he/she knowingly fails to fulfill that duty.  
(Ord. passed 8-10-98)

### **§ 116.18 EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES.**

(A) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(B) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this Chapter.

(C) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

(1) The establishment is a part of a commercial multi-unit center; and

(2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(D) Nothing in this Chapter shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

(E) A violation of any provision of this Section shall constitute a violation of this Chapter.  
(Ord. passed 8-10-98)

### **§ 116.19 SIGNAGE.**

(A) It shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) attached sign, as provided herein.

(B) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

(1) not contain any flashing lights;

(2) be a flat plane, rectangular in shape;

- (3) not exceed one hundred twenty-five (125) square feet in area; and
- (4) not exceed twenty (20) feet in height.

(C) Primary signs shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and may contain only the name of the enterprise.

(D) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on display surface of a primary sign shall be of a uniform and solid color.

(E) Attached signs shall have only one (1) display surface. Such display surface shall:

- (1) be a flat plane, rectangular in shape;
- (2) not exceed thirty-two (32) square feet in area;
- (3) not exceed four (4) feet in height and eight (8) feet in width; and
- (4) be directly affixed or attached to any wall or door of the enterprise.

(F) The provisions of § 116.19(B)(1) and § 116.19(C) and § 116.19(D) shall also apply to secondary signs.  
(Ord. passed 8-10-98)

**§ 116.20 MESSAGES OR BATHS ADMINISTERED BY A PERSON OF THE OPPOSITE SEX.**

It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex.

~~Violation of this Section shall constitute a misdemeanor.~~

(Ord. passed 8-10-98; Am. Ord. passed 1-3-22)

**§ 116.21 HOURS OF OPERATION.**

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) a.m. and eight o'clock (8:00) a.m. on weekdays and Saturdays, and one o'clock (1:00) a.m. and twelve o'clock (12:00) p.m. on Sundays.

(Ord. passed 8-10-98)

**§ 116.22 EXEMPTIONS.**

It is a defense to prosecution under this Chapter that a person appearing in a state of nudity did so in a modeling class operated:

(A) by a proprietary school, licensed by the State of North Carolina, a college, junior college, or university supported entirely or partly by taxation;

(B) by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

(Ord. passed 8-10-98)

**§ 116.23 NOTICES.**

(A) Any notice required or permitted to be given by the Ordinance Administrator or any other County office, division, department or other agency under this Chapter to any applicant, operator or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the Ordinance Administrator. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the Ordinance Administrator or his designee shall cause it to be posted at the principal entrance to the establishment.

(B) Any notice required or permitted to be given to the Ordinance Administrator by any person under this Chapter shall not be deemed given until and unless it is received in the office of the Ordinance Administrator.

(C) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Ordinance Administrator in writing of any change of residence or mailing address.

(Ord. passed 8-10-98)

**§ 116.24 INJUNCTION.**

A person who operates or causes to be operated a sexually oriented business without a valid business license or in violation of this Chapter is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation.

(Ord. passed 8-10-98)

**§ 116.25 CONFLICTING ORDINANCES REPEALED.**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

(Ord. passed 8-10-98)

**§ 116.26 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 116 originally adopted August 10, 1998, and all subsequent amendments, and shall be effective on and after January 3, 2022.

**CHAPTER 117: AMBULANCE SERVICE REGULATIONS AND  
AMBULANCE OPERATOR FRANCHISE**

Section

***General Provisions***

- 117.01 Authority and purpose
- 117.02 Definitions

***Franchise***

- 117.20 Franchise required
- 117.21 Application for ambulance franchise
- 117.22 Granting of franchise
- 117.23 Term of franchise
- 117.24 Standards for drivers and attendants
- 117.25 Standards for vehicles and equipment
- 117.26 Standards for communications
- 117.27 Insurance
- 117.28 Records

***Rates***

- 117.40 Rates and charges

***Enforcement***

- 117.50 Enforcement
- 117.51 Records, premises and equipment available for inspection
- 117.52 Addendum to ordinance
  
- 117.98 Penalties
- 117.99 Effective Date

**GENERAL PROVISIONS****§117.01 AUTHORITY AND PURPOSE.**

Pursuant to the authority granted by North Carolina General Statute §G.S. 153A-250, and upon a finding that it is necessary to assure the provision of adequate and continuing ambulance service and to preserve, protect and promote the public health, safety, and welfare of its citizens, the Haywood County Board of Commissioners hereby ordains this chapter.

**§117.02 DEFINITIONS.**

Unless the context otherwise requires, the following definitions shall apply in the interpretation and enforcement of this chapter:

**AMBULANCE.** Any privately or publicly owned motor vehicle, aircraft or vessel that is specially designed, constructed, or modified and equipped and is intended to be used for and is maintained or operated for the transportation on the streets or highways, waterways or airways of this state of persons who are sick, injured, wounded, or otherwise incapacitated or helpless.

**ADVANCED EMT.** An individual who has completed a training program in emergency medical care at least equal to the National Standard Training Program for Advanced Emergency Medical Technician, as defined by the United States Department of Transportation and has been certified as an emergency medical technician-paramedic by the North Carolina Department of Health and Human Services and works within the parameters established by medical direction.

**AVERAGE MAXIMUM USER FEE.** All charges for ambulance services rendered by the franchisee divided by the total number of ambulance transports for the same reporting period.

**AMBULANCE PROVIDER.** An individual, firm, corporation or association who engages or professes to engage in the business or service of transporting patients in an ambulance.

**APPROVED.** Approved by the North Carolina Medical Care Commission pursuant to the latter's rules and regulations promulgated under N.C. General Statutes §143B-165.

**911 COMMUNICATIONS CENTER.** That single facility operated by the County of Haywood which is the central communications center from which all ambulances shall be dispatched and tracked, and which receives all 911 emergency medical calls.

**COUNTY.** The Haywood County Board of Commissioners or their designated representative.

**TELECOMMUNICATOR.** A person who is available at all times to receive requests for ambulance services, to dispatch ambulance services, and to advise local law enforcement agencies

and emergency medical facilities of any existing or threatened emergency. Telecommunicators shall meet all requirements imposed by the State of North Carolina Department of Health and Human Services and the system's medical control authority.

***EMERGENCY and NON-EMERGENCY TRANSPORTATION SERVICE.*** The use of an ambulance, its equipment and personnel to provide medical care and transportation of a patient who is in need of Pre-hospital medical treatment in order to prevent loss of life or further aggravation or physiological or psychological illness or injury.

***EMERGENCY CALL.*** Any assignment categorized as constituting an emergency as defined herein or by the system of care as prescribed by the Medical Control Authority.

***EMERGENCY MEDICAL TECHNICIAN (EMT).*** An individual who has completed a training program in emergency medical care at least equal to the National Standard Training Program for Emergency Medical Technicians as defined by the United States Department of Transportation and has been certified as an emergency medical technician by the North Carolina Department of Health and Human Services and works within the parameters established by medical direction.

***PARAMEDIC.*** An individual who has completed a training program in emergency medical care at least equal to the National Standard Training Program for Emergency Medical Technician - Paramedic, as defined by the United States Department of Transportation and has been certified as an emergency medical technician-paramedic by the North Carolina Department of Human Resources and works within the parameters established by medical direction.

***FIRST RESPONDER.*** An organization with personnel trained in emergency medical care approved by the system's medical control authority that is dispatched to the scene of a medical emergency for the primary purpose of providing emergency medical assistance to a patient until the ambulance and additional medical personnel arrive on the scene.

***FRANCHISE.*** A permit issued by the County to a person or organization for the operation of an ambulance service.

***FRANCHISEE.*** Any person or entity having been issued a franchise by the County for the operation of an ambulance service.

***LICENSE.*** Any driver's license or permit to operate a motor vehicle issued under or granted by the laws of the State of North Carolina.

***MEDICAL CONTROL AUTHORITY.*** Haywood County Hospital, or its successor organization approved consistent with North Carolina Department of Human Resources regulations.

***MEDICAL DIRECTOR.*** A licensed physician appointed by Haywood County through a contract for services as defined in NC Administrative Code 10A 13P.

***NON-EMERGENCY TRANSPORTATION SERVICE.*** The operation of an ambulance for any purpose other than transporting emergency patients.

***OPERATOR.*** A person in actual physical control of an ambulance which is in motion or which has the engine running.

***OWNER.*** Any person or entity who owns an ambulance.

***PATIENT.*** An individual who is sick, injured, wounded, or otherwise incapacitated or helpless such that the need for some medical assistance might be anticipated while being transported to or from a medical facility.

***PERSON.*** Any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including any governmental agency other than the United States.

***RESCUE.*** Situations where the victim cannot escape an area through the normal exit or under his/her own power.

***RESPONSE TIME.*** That increment of time measured in minutes and seconds from the receipt of assignment by the County's 911 communication center and the arrival of the unit at the requested location.

***SYSTEM STANDARD OF CARE.*** The written body of standards and policies governing clinical aspects of the EMS system. As used in this context, System Standard of Care is a comprehensive term including:

(a) Input standards (e.g., personnel certification requirements, equipment specifications, on-board inventory requirements, and other requirements which the system must fulfill before receipt of a request for service).

(b) Performance standards (e.g., priority dispatching protocols and pre-arrival instructions, medical protocols, standing orders, response time standards, and other performance specifications describing how the system should behave upon receipt of a request for service).

(c) Outcome standards (e.g., target survival rates for certain narrowly defined presenting problems or presumptive diagnosis, such as witnessed cardiac arrests involving patients whose medical histories meet defined criteria). Outcome standards are results the system intends to achieve by meeting its input and performance standards.

## ***FRANCHISE***

### **§117.20 FRANCHISE REQUIRED.**

(A) No person either as owner, agent or otherwise, shall furnish, operate, conduct, maintain, advertise, or otherwise be engaged in or profess to be engaged in the business or service of emergency and/or non-emergency transportation of patients within the County of Haywood unless the person holds a valid permit for each ambulance used in such business or service issued by the North Carolina Department of Health and Human Services, Office of Emergency Medical Services, and has been granted a franchise for the operation of such business or service by the County pursuant to this chapter.

(B) No person shall drive an ambulance, attend a patient in one, or permit one to be operated when transporting a patient within the County of Haywood unless he or she holds a current valid certificate as an emergency medical technician, Advanced EMT or Paramedic issued by the North Carolina Department of Health and Human Services, Office of Emergency Medical Services. Active Fire Department members who currently possess the In-County/Non-State “first responder” certification are grand-fathered to operate EMS ambulances until at which time they become inactive or otherwise lose this certification.

(C) No franchise shall be required for:

(1) Any entity rendering assistance to a franchised ambulance service in the case of a major catastrophe, mutual aid or declared state of emergency with which the services franchised by the County of Haywood are insufficient or unable to cope; or,

(2) Any entity operated from a location or headquarters outside of the County of Haywood in order to transport patients who are picked up beyond the limits of the County of Haywood to facilities located within the County of Haywood, without the prior written permission of the authorized franchise holder.

(3) Ambulances owned and operated by an agency of the United States Government.

(4) Services provided by Haywood County Emergency Services, operated by County, or third party entities that might be called on to support services. (Refer to Emergency Services SOG 5.14)

**§117.21 APPLICATION FOR AMBULANCE FRANCHISE.**

(A) Application for a franchise to operate ambulances in the County of Haywood shall be made by the ambulance provider upon such forms as may be prepared or prescribed by the County and shall contain:

(1) Description of applicant organization.

(a) The applicant will provide a complete description and supporting documentation of the applying organization. All owners, officers, and key management personnel of the organization will be identified by name, ownership percentage, address, and phone number. The

address of the organization's headquarters will be provided along with the location of all sub-stations, satellite offices, or other divisions.

(b) The applicant will provide documentation that its business is lawfully established. Copies of documents required include Articles of Incorporation, assumed name certificates, applicable business licenses, employer tax identification numbers, ambulance licenses, vehicle permits, and Medicare and Medicaid provider numbers.

(c) The president or owner of the organization will warrant that the company has fulfilled all obligations and is current with regard to federal and state taxes (income, employer and employee withholdings), local business taxes, personal property taxes, state and Federal unemployment insurance, and workers compensation insurance payments. The owner or president also shall warrant that there are no, and for the past seven years have been no claims, debts, or liens resulting from Internal Revenue Service.

(d) The president or owner will also warrant that none of the organizations principle owners (>5%), key management personnel, companies with which they have been involved previously, the company or its predecessors have been convicted of any offenses regarding Medicare or Medicaid fraud and/or abuse, or have had their ambulance license suspended or revoked, or have been disbarred or suspended from participating in Medicare or Medicaid reimbursement programs, within the last seven years.

(e) Any items above which have occurred must be described in detail along with the final resolution of the action(s).

(f) Applicants will be required to submit to a thorough investigation of documentation and materials presented with this permit application. All principal owners (>5%) will submit executed notarized investigative releases and grant permission for the County to undertake a criminal record check.

(2) Description of services. The applicant shall provide a complete description of services for which it is requesting this permit. This description shall include geographic area and type of service to be provided.

(3) Analogous experience. Applicant shall provide documentation demonstrating current, and relevant past Emergency Medical Services (EMS) experience. This documentation shall demonstrate that the applicant is able to fully, safely, and reliably perform the services for which this permit is requested.

(4) Performance deployment and medical control compliance. The applicant shall provide pro forma deployment plans including stations and post locations for the ambulances. Plans and procedures for monitoring clinical care and assuring medical quality will be provided with this application. Proposed response time for each type of service to be provided will be defined.

(5) Vehicles and equipment. The applicant shall provide a complete listing of vehicles which it intends to utilize in the performance of the services covered by the permit requested. The type of vehicle, mileage and age will be provided. The applicant will also indicate its ratio of active to reserve units for services under this permit. A listing of all medical equipment and supplies which will be placed on-board each ambulance will be detailed. The major pieces of medical equipment (>\$500) which are held in reserve (not placed on an ambulance, but retained for replacement in case of malfunction or repair) will be listed.

(6) Personnel. The applicant shall provide a listing of all personnel which it intends to utilize in the performance of the services requested in the permit application. Copies of current certification, appropriate driver's licenses, and signed permission forms for criminal record checks will be attached to the application.

(7) Insurance.

(a) The applicant will document by attaching a certificate of insurance that it possesses professional medical liability insurance with combined single limits of \$3,000,000.

(b) The applicant will document by attaching a certificate of insurance that it possesses comprehensive and truck liability covering owned, hired, and non-owned vehicles with minimum limits of \$1,000,000, each for bodily injury including death, occurrence, and property damage of not less than \$100,000 per occurrence. Such insurance to include coverage for loading and unloading hazards.

(c) The applicant will document by attaching a certificate of insurance that it possesses comprehensive general liability insurance with combined single limits of not less than \$1,000,000.

(8) Proof of Financial Stability. The applicant will provide audited financial statements for the most recent three years available. The proposer may submit other items to document financial stability including lines of credit, bank and vendor letters of reference, or other items which may detail the applicant's financial position.

(9) Acceptance of terms and conditions. The applicant will agree to comply in writing, upon submitting this application and acceptance of a permit, with all regulations and conditions for permit holders, and also any subsequent regulations and conditions legally imposed by proper authorities.

(10) Information provided is accurate. The applicant will warrant that all information provided with its application for EMS permit is accurate and complete. Any omission, falsification or misrepresentation of information and materials shall result in permit denial, and the applicant will be precluded from further permit application for five years.

(11) Any information the County shall deem reasonably necessary for a fair determination of the capability of the applicant to provide ambulance services in the County of Haywood in

accordance with the requirements of state laws and the provisions of this regulation, including a statement from the local medical control authority in regards to the application.

#### **§117.22 GRANTING OF FRANCHISE.**

(A) Prior to accepting applications for the operation of an ambulance service, the Board of Commissioners may designate specific service areas as franchise districts. Said districts will be established using criteria that includes geographic size, road access, and the location of existing medical transportation services, population, and response time. The County shall have the authority to redistrict or rearrange existing districts at any time at their discretion. However, no such districting or redistricting shall occur without the County first conducting a public hearing and making a finding of fact that a need does exist, that the proposed service offers a higher standard of care, and that the County's existing franchise holder(s) is unwilling or unable to meet the need or the proposed hither standard of care.

(B) An applicant may apply for a franchise to operate either emergency transportation service or non-emergency transportation service or both. If both types of service are to be provided, separate applications must be filed for each type.

(C) Upon receipt of an application for a franchise, the County shall schedule a time and place for hearing the applicant. Within 30 days after the hearing, the County shall cause such investigation as it may deem necessary to be made of the applicant and his proposed operations.

(D) A franchise may be granted if the County finds that:

(1) The applicant meets all applicable state standards and regulations and the requirements and regulations of the franchise ordinance and standards which are consistent with and supplementary to any N.C. Statute or any Department of Health and Human Services regulation relating to ambulance services.

(2) The proposed service will fit within the existing service so as not to adversely affect the level of service or operations of other franchisees to render service.

(3) A need exists for the proposed service in order to improve the level of ambulance services available to residents of the county and that this is a reasonable and cost effective manner of meeting the need. Factors to be considered in evaluating need include: call volume in the proposed area; quality of the existing service and whether quality would be improved in the proposed and surrounding service areas by an additional service; response times; communications systems capability for maintaining medical control.

#### **§117.23 TERM OF FRANCHISE.**

(A) The County may issue a franchise hereunder to an ambulance provider, to be valid for a term to be determined by the County, provided that either party at its option, may terminate the

franchise upon 180 days prior written notice to the other party. After a notice of service termination is given, the ambulance provider may reapply for a franchise if continued service is desired.

(B) Upon suspension, revocation, or termination of a franchise granted hereunder, such franchised ambulance service immediately shall cease operations. Upon suspension, revocation, or termination of a driver's license or attendant's certificate or emergency medical technician certificate, such persons including a franchisee, shall cease to drive an ambulance or provide medical care in conjunction with an ambulance service, or attend an ambulance. The franchisee shall not permit such an individual to drive an ambulance or provide medical care in conjunction with the ambulance service.

(C) Each franchised ambulance service shall comply at all times with the requirements of this chapter, the franchise granted hereunder, and all applicable state and local laws relating to health, sanitation, safety, equipment, ambulance design, and medical control authority requirements, and all other laws, regulations and ordinances. Noncompliance with any franchise term may constitute grounds for immediate suspension or termination of the franchise by the County irrespective of the termination provisions of §117.23(A) above.

(D) Prior approval of the County shall be required where ownership or control of more than 10 percent of the right of control or franchisee is acquired by a person or group of persons acting in concert, none of whom own or control 10 percent or more of such right of control, singularly or collectively, at the date of the franchise. By its acceptance of the franchise, the franchisee specifically agrees that any such acquisition occurring without prior approval of the county shall constitute a violation of the franchise by the franchisee and shall be cause for termination at the option of the County.

(E) Any change of ownership of a franchised ambulance service without the approval of the County shall terminate the franchise and shall require a new application and a new franchise and conformance with all the requirements of this chapter as upon original franchising.

(F) No franchise may be sold, assigned, mortgaged, or otherwise transferred without the approval of the County.

(G) The franchised ambulance service shall participate and attend Peer Review Committee meetings as defined in NC Administrative Code 10A 13P.

**§117.24 STANDARDS FOR DRIVERS AND ATTENDANTS.**

Standards for drivers and attendants as developed by the North Carolina Medical Care Commission as requirements for certification of ambulance attendants and emergency medical technicians pursuant to Article 7, Chapter 131 E-158, and Article 56, Chapter 143 of the General Statutes of North Carolina, shall be applied and the same are incorporated herein by reference.

**§117.25 STANDARDS FOR VEHICLES AND EQUIPMENT.**

Vehicle and equipment standards as developed by the North Carolina Medical Care Commission pursuant to Article 7, Chapter 131 E-157, and Article 56, Chapter I 43, of the General Statutes of North Carolina, shall be applied and the same are incorporated herein by reference.

**§117.26 STANDARDS FOR COMMUNICATIONS.**

(A) Each ambulance vehicle shall be equipped with an operational two-way radio capable of establishing good quality voice communications from within the geographic confines of the county to each hospital(s) emergency department in the county in which the ambulance is based. Each ambulance vehicle shall be equipped with two-way radio communications capabilities compatibility with all hospitals emergency departments to which transportation of patients is made on a regular or routine basis anywhere within the state. Each ambulance vehicle shall be equipped with an operational two-way radio capable of establishing good quality voice communications from within the geographic confines of the county to the ambulance dispatching agency within the county.

(B) Each ambulance provider shall maintain current authorizations or Federal Communications Commission licenses for all frequencies and radio transmitters operated by that provider. Copies of all authorizations and licenses shall be on display and available for inspection per Federal Communications Commission's Rules and Regulations.

(C) All franchised ambulance services shall be dispatched and controlled by the County's communications center. No provider shall publish or advertise any phone numbers for ambulance services for the purpose of receiving request for emergency ambulance service other than 911 or other number of the County communications center.

(D) It will be the responsibility of the franchisee to remain up to date with technology and frequencies if the County chooses to change either. This will not be a cost incurred by the County or any of its departments

**§117.27 INSURANCE.**

(A) No ambulance franchise shall be issued under this Chapter, nor shall such franchise be valid after issuance, nor shall any ambulance be operated in the County of Haywood unless the franchisee has at all times in force and effect insurance coverage, issued by an insurance company licensed to do business in the State of North Carolina, for each and every ambulance owned and/or operated by or for the ambulance service providing for the payment of damages:

(1) In the sum of one million (\$1,000,000) dollars per person per accident for injury to or death of individuals in accidents resulting from any cause for which the owner of said vehicle would be liable on account of liability imposed on him by law, regardless of whether the ambulance was being driven by the owner or his agency; such insurance to include coverage for loading and unloading hazards and,

(2) In the sum of one hundred thousand (\$100,000) dollars per person per accident or the loss of or damage to the property of another, including personal property, under like circumstances, in sums as may be required by the State or as approved by the County of Haywood.

(3) In the sum of three million (\$3,000,000) dollars, combined single limit per occurrence for damages resulting from professional liability claims.

**§117.28 RECORDS.**

Each franchisee shall maintain the following records:

(1) Record of Dispatch - Shall show time call was received, time ambulance dispatched, time arrived on scene, time arrived at destination, time in service, and time returned to base.

(2) Trip Record - Shall state all information required in Section (1) in addition to information on a form approved by the County.

(3) Daily Report Log - Shall be maintained for the purpose of identifying more than one person transported in any one day.

(4) Daily Driver and Attendant Checklist and Inspection Report - Shall list contents and description of operations for each vehicle, signed by the individual verifying vehicle operations and equipment.

(5) Reports reasonably required by the medical control authority.

(6) Any other records required by regulating agencies.

***RATES***

**§117.40 RATES AND CHARGES.**

(A) Each franchisee shall submit its Average Maximum User fee and supporting schedules to the County for approval and shall not charge more than the approved annual Average Maximum User Fee without specific approval by the County.

(B) For services provided within the County, the Franchisee shall not attempt to collect user fees until the patient has reached the point of destination, has received medical attention and is in a condition deemed by the physician fit to consult with the ambulance service, but such service request payment from a family member or guardian of the patient once the patient is in the process of receiving medical attention.

(C) For services provided which involve transportation originating outside the County or terminating more than fifty (50) miles outside the County, payment may be required before rendering service.

### ***ENFORCEMENT***

#### **§117.50 ENFORCEMENT.**

The Director of the Haywood County Emergency Services shall be the enforcing agency for the regulations contained in this Chapter. Such office will:

(A) Receive all franchise proposals from potential providers.

(B) Study each proposal for conformance to this Chapter.

(C) Recommend to the Board of Commissioners the award of the franchise(s) to the applicants submitting the best proposal(s).

(D) Inspect the premises, vehicles, equipment, and personnel of franchisees to assure compliance to this Chapter and perform any other inspections that may be required.

(E) Recommend to the Board of Commissioners the temporary or permanent suspension of a franchise in the event of noncompliance with the franchise terms of this Chapter. Recommend the imposition of penalties as provided under section §117.98 hereof.

(F) Insure by cooperative agreement with other ambulance services the continued service in an area where an ambulance service franchise has been suspended.

(G) Receive monthly reports from ambulance services and consolidate the same into a quarterly summary for review by the County Manager.

(H) Receive complaints from the public, other enforcing agencies, and ambulance services regarding franchise infractions; review the complaint with the County Manager; obtain corrective action with the approval of the County Manager; notify the County Commissions of any proposed corrective actions or actions already taken due to emergency.

(I) Recommend improvements to the County which will insure better medical transportation.

(J) Maintain all records required by this chapter and other applicable County regulations. (K) Perform such of the above functions as may be requested by any municipality within the County of Haywood.

**§117.51 RECORDS, PREMISES AND EQUIPMENT AVAILABLE FOR INSPECTION.**

The County may inspect a franchisee's records, premises, and equipment at any reasonable time in order to insure compliance with this chapter and any franchise granted hereunder.

**§117.52 ADDENDUM TO ORDINANCE.**

(A) The Board of Commissioners of the County of Haywood may, through appropriate actions, amend or expand this chapter to include other emergency departments or agencies as deemed necessary.

(B) The County reserves the right to adopt in the future such regulations as it deems necessary to fulfill its obligations under this chapter. All such regulations shall be binding on all franchisees. However, prior to the implementation of any such regulations, County will publish the proposed regulations for a period of not less than 30 days, shall request a fiscal impact statement from franchisees, and shall hold a public hearing on said regulations.

**§117.98 PENALTIES.**

~~(A) Any person or entity violating any provision of section §117.20 of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with North Carolina General Statute 14-1. Each day that the violation continues shall constitute a separate offense.~~

~~(B) If the Haywood County Board of Commissioners find that any person or entity including a franchisee, has violated the provisions of section §117.20 or that any franchisee has failed to comply with any of the terms or obligations of the franchise, they may, in addition to all other remedies available either in law or in equity, institute a civil penalty in an amount equal to the maximum allowable N.C. General Misdemeanor fine; act or proceed to restrain, correct, or abate the violation of failure to comply. Each day that the violation or failure to comply continues shall constitute a separate violation.~~

~~(Ord. passed 12-1-95; Am. Ord. 1-3-22)~~

Ord. passed 12-1-95; Am. Ord. passed 6-17-19; Am. Ord. passed 1-3-22

**§117.99 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This ~~revised amended~~ ordinance revises and supplants the ordinance in Chapter 117 ~~which was~~ originally ~~adopted enacted on~~ December 1, 1995, ~~and~~ all subsequent amendments, and shall be effective ~~on and after January 3, 2022.~~July 1, 2019.

~~Approved and adopted the 17<sup>th</sup> day of June, 2019.~~

\_\_\_\_\_  
\_\_\_\_\_  
L. Kevin Ensley, Chairman

\_\_\_\_\_  
\_\_\_\_\_  
Haywood County Board of Commissioners

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_  
Elizabeth C. Way, Clerk to the Board  
Haywood County Board of Commissioners

## CHAPTER 151: WATERSHED PROTECTION

### Section

#### *General Provisions*

- 151.01 [Definitions](#)
- 151.02 [Word interpretation](#)
- 151.03 [Authority and enactment](#)
- 151.04 [Jurisdiction](#)
- 151.05 [Exceptions to applicability](#)

#### *Subdivision Regulations*

- 151.15 [General provisions](#)
- 151.16 [Subdivision application and review procedures](#)
- 151.17 [Subdivision standards and required improvements](#)
- 151.18 [Construction procedures](#)

#### *Development Regulations*

- 151.30 [Establishment of watershed areas](#)
- 151.31 [Watershed areas described](#)
- 151.32 [Regulations for manufactured/mobile home parks and recreational vehicles](#)
- 151.33 [Cluster development](#)
- 151.34 [Buffer areas required](#)
- 151.35 [Rules governing the interpretation of watershed area boundaries](#)
- 151.36 [Application of regulations](#)
- 151.37 [Existing development](#)

#### *Public Health Regulations*

- 151.50 [General provisions](#)
- 151.51 [Abatement](#)

#### *Permits*

- 151.65 [Watershed protection permit](#)
- 151.66 [Building permit required](#)
- 151.67 [Watershed protection occupancy permit](#)

*Administration and Enforcement*

- 151.80 [Watershed Administrator](#)
- 151.81 [Changes and amendments to watershed protection regulations](#)
- 151.82 [Public notice and hearing required](#)
- 151.83 [Establishment of Watershed Review Board](#)
- 151.84 [Rules of conduct for members](#)
- 151.85 [Powers and duties of Watershed Review Board](#)
- 151.86 [Appeal from the Watershed Administrator](#)
- 151.87 [Appeals from the Watershed Review Board](#)
  
- 151.98 [Violations](#)
- 151.99 [Penalty](#)
- [Appendix](#): Existing development

**GENERAL PROVISIONS****§ 151.01 DEFINITIONS.**

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

**BALANCE OF WATERSHED.** All land area within a watershed but outside of the critical area.

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

**BUFFER.** An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

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

**BUILT-UPON AREA.** Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel

areas (e.g. roads, parking lots, paths), recreation facilities (for example, tennis courts), and the like. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious).

**CLUSTER DEVELOPMENT.** The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes non-residential development as well as single-family residential and multi-family. For the purpose of this chapter, planned unit developments and mixed use developments are considered as cluster development.

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

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

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

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

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

(1) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the projects, or

(2) Having an outstanding valid building permit as authorized by G.S. § 153A-344.1 and G.S. § 160A-385.1, or

(3) Having an approved site specific or phased development plan as authorized by G.S. § 153A-344.1 and G.S. § 160A-385.1.

**EXISTING LOT (LOT OF RECORD).** A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter.

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

**FAMILY SUBDIVISION.** A division of a tract of land into two or more parcels between persons who are in any degree of lineal kinship or within three degrees of collateral kinship to the grantor, both as are described under G.S. § 104A-1. By way of example, such degrees of kinship would include children, grandchildren, great-grandchildren, parents, grandparents, brothers and sisters, uncles and aunts, nieces and nephews.

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

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

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

**MAJOR VARIANCE.** A variance from the minimum statewide watershed protection rules that results in any one or more of the following:

- (1) The relaxation, by a factor greater than 10 percent, of any management requirement under the low density option;
- (2) Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

**MINOR VARIANCE.** A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to 10 percent, of any management requirement under the low density option.

**NON-CONFORMING LOT OF RECORD.** A lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations (or their amendments) that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

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

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

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

**RESIDUALS.** Any solid or demisolid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.

**SINGLE-FAMILY RESIDENTIAL.** Any development where:

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

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

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

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

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

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to, or exceed, the standards of this chapter;

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

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

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

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

**WATERSHED.** The entire land area contributing surface drainage to a specific point (for example, the water supply intake.)

**WATERSHED ADMINISTRATOR.** An official or designated person of the county responsible for administration and enforcement of this chapter.  
(Ord. passed 12-16-93: Am. Ord. passed 7-28-97)

## § 151.02 WORD INTERPRETATION.

For the purpose of this chapter, certain words shall be interpreted as follows:

- (A) Words in the present tense include the future tense.
- (B) Words used in the singular number include the plural and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

(C) The word **PERSON** includes a firm, association, corporation, trust, and company as well as an individual.

(D) The word **STRUCTURE** shall include the word **BUILDING**.

(E) The word **LOT** shall include the words **PLOT, PARCEL, or TRACT**.

(F) The word **SHALL** is always mandatory and not merely directory.

(G) The word **WILL** is always mandatory and not merely directory.  
(Ord. passed 12-16-93)

**§ 151.03 AUTHORITY AND ENACTMENT.**

(A) *Authority and enactment.* The Legislature of the state has, in G.S. § 153A-121 and in G.S. Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and in Chapter 970 of the 1985 Session Laws, as amended by Chapter 282 of the 1993 Session Laws, the Legislature has authorized the county to regulate the subdivision and development of land as defined in the County Pre-Development ordinance. The Governing Board of the county does hereby ordain and enact into law the following sections as the Watershed Protection ordinance of the county.

(B) *Date of adoption and effective date.* This chapter was adopted on December 16, 1993, and shall take effect and be in force on January 1, 1994.  
(Ord. passed 12-16-93)

***Cross-reference:***

*Pre- development, see Ch. 152*

**§ 151.04 JURISDICTION.**

The provisions of this chapter shall apply within the areas designated as a Public Water Supply Watershed by the State Environmental Management Commission and shall be defined and established on the map entitled, *Watershed Protection Map of Haywood County, North Carolina* (the watershed map), which is adopted simultaneously herewith. The watershed map and all explanatory matter contained thereon accompanies and is hereby made a part of this chapter. This chapter shall be permanently kept on file in the office of the County Clerk. At the request of the Town of Maggie Valley, the county will be administering the Watershed Protection chapter within the town limits.  
(Ord. passed 12-16-93)

**§ 151.05 EXCEPTIONS TO APPLICABILITY.**

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

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

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

(D) A pre-existing lot recorded prior to January 1, 1994, regardless of whether or not a vested right has been established, may be developed for single-family residential purposes without being subject to the density restrictions of this chapter; however, required buffer strips are still applicable. Any lot or parcel created as part of a family subdivision after the effective date of these rules shall be exempt from these rules, including the buffer requirements, if it is developed for one single-family detached residence.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97)

***SUBDIVISION REGULATIONS*****§ 151.15 GENERAL PROVISIONS.**

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

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

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

(D) All subdivisions of land within the watershed protection jurisdiction of the county after January 1, 1994 shall require a plat to be prepared, approved, and recorded pursuant to this chapter.

(E) All subdivisions and developments of land, as defined in the county pre-development ordinance, that are located within the county water supply watersheds are subject to the provisions of the pre-development ordinance, including septic evaluations for minimum lot size. All lot sizes specified in this chapter are minimum lot sizes; larger lots may be required by the County Health Department, according to applicable rules and regulations governing ground absorption sewage disposal systems.

(F) All projects, developments, and subdivisions shall be in compliance with applicable rules and regulations adopted by the County Board of Health.

(G) The county shall develop, and from time to time revise, forms for the purpose of implementing this chapter.

(Ord. passed 12-16-93) Penalty, see § 151.99

***Cross-reference:***

*Pre-development, see Chapter 152*

***Statutory reference:***

*Subdivision regulations generally, see G.S. §§ 153A-335*

**§ 151.16 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.**

(A) *Proposed subdivisions.* All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the Watershed Administrator or the Director of Land Records to determine whether or not the property is located within the designated public water supply watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this chapter and may be recorded provided they meet the provisions of the Pre-Development Ordinance. Subdivisions within the designated watershed area shall comply with the provisions of this subchapter and all other state and local requirements that may apply.

(B) *Application.* Subdivision applications shall be filed with the Watershed Administrator. The application shall include a completed application form, at least six copies of the plat, and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board. The Watershed Administrator may at any time elect to consult the Watershed Review Board regarding the decision for a subdivision plat.

(C) *Review.*

(1) The Watershed Administrator shall review the completed application and final plat for compliance with the requirements set forth in this section. Failure to comply with these requirements shall constitute grounds for disapproving the final plat.

(2) The Watershed Administrator may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their comments and recommendations shall not delay the Administrator's action within the prescribed time limit. The public agencies may include, but are not limited to, the following:

(a) The district highway engineer with regard to proposed streets and highways.

(b) The director of the Health Department with regard to proposed private water system or sewer systems normally approved by the Health Department.

(c) The State Division of Environmental Management with regard to proposed sewer systems normally approved by the Division, engineered storm water controls, or storm water management in general.

(d) Any other agency or official designated by the Watershed Administrator or Watershed Review Board.

(D) *Approval.* If the Watershed Administrator approves the application, such approval shall be indicated on all copies of the plat by the following certificate and signed by the Administrator:

“Certificate of Approval for Recording

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Watershed Administrator

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

(E) *Review Board.*

(1) The Watershed Administrator shall notify the developer of the decision regarding the final plat within 25 working days after the plat is submitted for review and deemed to be complete. If the Watershed Administrator disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review. Appeals from the decision of the Watershed Administrator regarding plats shall be to the Watershed Review Board.

(2) The Watershed Administrator shall inform the Watershed Review Board of action taken regarding subdivision plats and site plans.

(F) *Recording requirements.* All subdivision plats shall comply with the requirements for recording of the County Register of Deeds.  
(Ord. passed 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.99

#### **§ 151.17 SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS.**

(A) *Building space.* All lots shall provide adequate building space in accordance with the development standards contained in §§ 151.30 through 151.37. Lots recorded after January 1, 1994 which are smaller than the minimum required for residential lots may be developed using built-upon criteria in accordance with §§ 151.30 through 151.37.

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

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

(D) *Erosion and sedimentation control.* The application shall, where required, be accompanied by a written statement that a Sedimentation and Erosion Control Plan has been submitted to, and approved by, the local or state agency responsible for administering the sedimentation and erosion control laws of the state.

(E) *Roads constructed in critical areas and watershed buffer areas.* Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed to minimize their impact on water quality.  
(Ord. passed 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.99

#### **§ 151.18 CONSTRUCTION PROCEDURES.**

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

(B) No building or other permits shall be issued for erection of a structure on any lot not of record on January 1, 1994 until all requirements of this chapter have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.  
(Ord. passed 12-16-93) Penalty, see § 151.99

***Statutory reference:***

*County authority to establish permit programs, see G.S. § 143-215.1(f)*

***DEVELOPMENT REGULATIONS*****§ 151.30 ESTABLISHMENT OF WATERSHED AREAS.**

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

(B) For purposes of this chapter the county is divided into the following areas, as appropriate:

(1) WS-I.

(2) WS-II-CA (Critical Area).

(3) WS-II-BW (Balance of Watershed).

(4) WS-III-CA (Critical Area).

(5) WS-III-BW (Balance of Watershed).

(Ord. passed 12-16-93) Penalty, see § 151.99

**§ 151.31 WATERSHED AREAS DESCRIBED.**

(A) *WS-I Watershed Areas - (WS-I)*. The intent is to provide maximum protection for water supplies within essentially natural and undeveloped watersheds in public ownership by allowing only low-intensity uses. No residential or non-residential uses are allowed except those listed below. Impacts from non-point-source pollution shall be minimized.

(1) *Allowed uses:*

(a) Agriculture.

(b) Silviculture.

(c) Water withdrawal, treatment, and distribution facilities.

(d) Restricted road access.

(e) Power transmission lines.

(2) *Density and built-upon area limits do not apply.*

(B) *WS-II Watershed Areas - Critical Area (WS-II-CA)*. In order to maintain a predominately undeveloped land use intensity pattern, single-family residential uses shall be allowed at a maximum of one dwelling unit per two acres. All other residential and non-residential development shall be

allowed at a maximum 6 percent built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) *Allowed uses.*

- (a) Agriculture.
- (b) Silviculture.
- (c) Residential development.
- (d) Non-residential development, excluding:
  - 1. Landfills; and
  - 2. Sites for land application of residuals or petroleum contaminated soils.

(2) *Density and built-upon limits.*

(a) Single-family residential. Development shall not exceed one dwelling unit per two acres on a project-by-project basis. No residential lot shall be less than two acres (80,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) In the alternative, single-family residential development is allowed on lots less than two acres provided that the impervious surface coverage of all structures does not exceed six percent. A note shall be added to the deed to reflect this provision; however, should the Haywood County Watershed Protection Ordinance be repealed, this provision shall be null and void.

(c) All other residential and non-residential, including manufactured/mobile home parks. Development shall not exceed 6 percent built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) *WS-II Watershed Areas - Balance of Watershed (WS-II-BW).* In order to maintain a predominantly undeveloped land use intensity, single-family residential uses shall be allowed at a maximum of one dwelling unit per acre. All other residential and non-residential development shall be allowed a maximum of 12 percent built-upon area. In addition, new development may occupy ten percent of the watershed area which is outside the critical area, with a 70 percent built-upon area when approved as a special intensity allocation (SIA). The Watershed Administrator is authorized to approve SIAs consistent with the provisions of this chapter. Allocation of this development privilege shall be made by the Board of County Commissioners in accordance with rules and procedures to be established. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water-quality impacts. Non-discharging landfills and residuals application sites are allowed.

(1) *Allowed uses.*

- (a) Agriculture.
- (b) Silviculture.
- (c) Residential development.
- (d) Non-residential development excluding discharging landfills.

(2) *Density and built-upon limits.*

(a) Single-family residential. Development shall not exceed one dwelling unit per acre on a project-by-project basis. No residential lot shall be less than one acre (or 40,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) In the alternative, single-family residential development is allowed on lots less than one acre provided that the impervious surface coverage of all structures does not exceed 12 percent. A note shall be added to the deed to reflect this provision; however, should the Haywood County Watershed Protection Ordinance be repealed, this provision shall be null and void. Single-family residential development is not eligible for special intensity allocations.

(c) All other residential and non-residential, including manufactured/mobile home parks. Development shall not exceed 12 percent built-upon area on a project by project basis except that up to 10 percent of the balance of the watershed may be developed for at up to 70 percent built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(D) *WS-III Watershed Areas - Critical Area (WS-III-CA)*. In order to maintain a low to moderate land use intensity, single-family residential uses are allowed at a maximum of one dwelling unit per acre. All other residential and non-residential development shall be allowed to a maximum of 12 percent built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) *Allowed uses.*

- (a) Agriculture.
- (b) Silviculture.
- (c) Residential.
- (d) Non-residential development, excluding:
  - 1. Landfills, and

2. Sites for land application of residuals or petroleum contaminated soils.

(2) *Density and built-upon limits.*

(a) Single-family residential. Development shall not exceed one dwelling unit per acre on a project-by-project basis. No residential lot shall be less than one acre (or 40,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) In the alternative, single-family residential development is allowed on lots less than one acre provided that the impervious surface coverage of all structures does not exceed 12 percent. A note shall be added to the deed to reflect this provision; however, should the Haywood County Watershed Protection Ordinance be repealed, this provision shall be null and void.

(c) All other residential and non-residential, including manufactured/mobile home parks. Development shall not exceed 12 percent built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

(E) *WS-III Watershed Areas - Balance of Watershed (WS-III-BW)*. In order to maintain a low to moderate land use pattern, single-family detached uses shall develop at a maximum of two dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of 24 percent built-upon area. In addition, new development and expansions to existing development may occupy 10 percent of the balance of the watershed area with up to 70 percent built-upon area when approved as a special intensity allocation (SIA). The Watershed Administrator is authorized to approve SIAs consistent with the provisions of this chapter. Allocation of this development privilege shall be made by the Board of County Commissioners in accordance with rules and procedures to be established. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and residuals application sites are allowed.

(1) *Allowed uses.*

(a) Agriculture.

(b) Silviculture.

(c) Residential development.

(d) Non-residential development excluding discharging landfills.

(2) *Density and built-upon limits.*

(a) Single-family residential. Development shall not exceed two dwelling units per acre, as defined on a project-by-project basis. No residential lot shall be less than one-half acre (or

20,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) In the alternative, single-family residential development is allowed on lots less than one-half acre provided that the impervious surface coverage of all structures does not exceed 24 percent. A note shall be added to the deed to reflect this provision; however, should the Haywood County Watershed Protection Ordinance be repealed, this provision shall be null and void. Single-family residential development is not eligible for special intensity allocations.

(c) All other residential and non-residential, including manufactured/mobile home parks. Development shall not exceed 24 percent built-upon area on a project-by-project basis except that up to 10 percent of the balance of the watershed may be developed with new development and expansions to existing development at up to 70 percent built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97)

#### **§ 151.32 REGULATIONS FOR MANUFACTURED/MOBILE HOME PARKS AND RECREATIONAL VEHICLES.**

For the purposes of this chapter, the number of manufactured/mobile homes allowed in a manufactured/mobile home park shall be determined based on the amount of built-upon area. Manufactured/mobile homes shall be considered as part of the built-upon area, as shall "park model" or other recreational vehicles that are permanently anchored to the ground as part of a development or project. Recreational vehicles that are road-ready, with wheels attached and towing apparatus in place, shall not be considered in the built-upon area calculation.

(Ord. passed 12-16-93)

#### **§ 151.33 CLUSTER DEVELOPMENT.**

Clustering of development is allowed in all watershed areas under the following conditions:

(A) Minimum lot sizes are not applicable to single-family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments in § 151.31. Density or built-upon area for the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.

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

(C) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization for

preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.99

**§ 151.34 BUFFER AREAS REQUIRED.**

(A) A minimum 30-foot vegetative buffer for development activities, as measured from the top of the bank, is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increases in impervious area and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater Best Management Practices.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.99

**§ 151.35 RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES.**

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

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

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

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

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

(E) Where other uncertainty exists, the Watershed Administrator shall interpret the Watershed Map as to location of the boundaries. This decision may be appealed to the Watershed Review Board.

(Ord. passed 12-16-93)

**§ 151.36 APPLICATION OF REGULATIONS.**

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

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

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

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.99

**§ 151.37 EXISTING DEVELOPMENT.**

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

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

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

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

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

(C) *Reconstruction of buildings or built-upon areas.* Any existing building or built-upon area not in conformance with the restrictions of this chapter that has been damaged or removed may be repaired and/or reconstructed subject to the State Building Code, so long as the total amount of lot coverage is less than or equal to the percent of built-upon area allowed in the watershed or is not increased from what was there before, whichever amount is greater. There are no restrictions on single-family residential development.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.99

*PUBLIC HEALTH REGULATIONS*

**§ 151.50 GENERAL PROVISIONS.**

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

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.99

**§ 151.51 ABATEMENT.**

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

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

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

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97)

*PERMITS*

**§ 151.65 WATERSHED PROTECTION PERMIT.**

(A) Except where a single-family residence is constructed on a lot deeded prior to January 1, 1994, no building or built-upon area shall be erected, moved, enlarged, or structurally altered, nor shall any building permit be issued, nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the Watershed Administrator. No watershed protection permit shall be issued except in conformity with the provisions of this chapter.

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

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

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

(E) The county shall develop, and from time to time revise, forms for the purpose of implementing this chapter.

(Ord. passed 12-16-93) Penalty, see § 151.99

### **§ 151.66 BUILDING PERMIT REQUIRED.**

No permit required under the State Building Code shall be issued for any activity for which a watershed protection permit is required until that permit has been issued.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.99

### **§ 151.67 WATERSHED PROTECTION OCCUPANCY PERMIT.**

(A) The Watershed Administrator shall issue a watershed protection occupancy permit certifying that all requirements of this chapter have been met prior to the occupancy or use of a building hereafter erected, altered, or moved and/or prior to the change of use of any building or land in the following circumstances:

1. when there is a perennial stream on the property;
2. when impervious surface coverage is used for a residential watershed permit instead of minimum lot size;
3. when a commercial watershed permit is issued;
4. when stormwater management facilities are used.

When a watershed occupancy permit is required, the following conditions apply:

(B) A watershed protection occupancy permit, either for the whole or part of a building, shall be applied for coincident with the application for a watershed protection permit and shall be issued or denied within ten days after the erection or structural alterations of the building.

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

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

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

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.99

***ADMINISTRATION AND ENFORCEMENT***

**§ 151.80 WATERSHED ADMINISTRATOR.**

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

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

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

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

(3) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection regulations and shall provide copies of all amendments upon adoption to the Water Quality Section of the Division of Environmental Management.

(4) The Watershed Administrator shall keep records of the jurisdiction's utilization of the provision that a maximum of 10 percent of the non-critical area of WS-II and WS-III watersheds may be developed with development at a maximum of 70 percent built-upon surface area. Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use, and stormwater management plan if applicable.

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

(6) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed protection regulations. This record shall be submitted to the Division of Water Quality for each calendar year or before January 1 of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance. (Ord. passed 12-16-93; Am. Ord. passed 7-28-97)

#### **§ 151.81 CHANGES AND AMENDMENTS TO WATERSHED PROTECTION REGULATIONS.**

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

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

(C) Under no circumstances shall the County Board of Commissioners adopt such amendments, supplements, or changes that would cause this chapter to violate the watershed protection rules as adopted by the State Environmental Management Commission. All amendments must be filed with the State Division of Environmental Management, State Division of Environmental Health, and the State Division of Community Assistance. (Ord. passed 12-16-93)

#### **§ 151.82 PUBLIC NOTICE AND HEARING REQUIRED.**

Before adopting or amending this chapter, the County Board of Commissioners shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than 10 nor more than 25 days before the date fixed for the hearing. (Ord. passed 12-16-93)

#### **§ 151.83 ESTABLISHMENT OF WATERSHED REVIEW BOARD.**

(A) There shall be and is created the Watershed Review Board consisting of nine members appointed by the County Board of Commissioners. The members shall be residents of the county. Three members shall be from the Pigeon Valley, three from Maggie Valley, one from Waynesville, one from Canton, and one shall be a member of the Board of Commissioners.

(B) Five members shall be appointed for three year terms, and four members shall be appointed for two-year terms. Thereafter, all new terms shall be for three years, and members may be reappointed for one additional full three-year term.  
(Ord. passed 12-16-93)

**§ 151.84 RULES OF CONDUCT FOR MEMBERS.**

(A) Members of the Board may be removed by the County Board of Commissioners for cause, including violation of the rules stated in divisions (B) through (G) of this section.

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

(C) No Board member shall take part in the hearing, consideration, or determination of any case in which he or she is personally or financially interested. A Board member shall have a **FINANCIAL INTEREST** in a case when a decision in the case will:

(1) Cause the Board member or the Board member's spouse to experience a direct financial benefit or loss, or

(2) Will cause a business in which the Board member or the Board member's spouse owns a 10 percent or greater interest, or in which the Board member or the Board member's spouse is involved in a decision-making role, to experience a direct financial benefit or loss. A Board member shall have a **PERSONAL INTEREST** in a case when it involves a member of his or her immediate family (for example, parent, spouse, or child).

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

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

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

(G) No Board member shall vote on any matter that decides an application or appeal unless he or she has attended the public hearing of that application or appeal.  
(Ord. passed 12-16-93)

**§ 151.85 POWERS AND DUTIES OF WATERSHED REVIEW BOARD.**

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

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

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

(a) A site plan, drawn to a scale of at least one inch to 40 feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north arrow point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

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

(c) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption whenever a variance request is filed. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

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

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

1. If he complies with the provisions of this chapter, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate

to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of this chapter that will make possible the reasonable use of his property.

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

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

4. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates this chapter and then comes to the Board for relief.

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

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

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

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

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

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

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

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

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

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

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

(C) *Subdivision approval.* For subdivision approval see §§ 151.15 through 151.18.

(D) *Public health.* For public health provisions see §§ 151.50 and 151.51.  
(Ord. passed 12-16-93)

### **§ 151.86 APPEAL FROM THE WATERSHED ADMINISTRATOR.**

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

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

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

(D) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent, or by attorney.  
(Ord. passed 12-16-93)

#### **§ 151.87 APPEALS FROM THE WATERSHED REVIEW BOARD.**

Appeals from the Watershed Review Board must be filed with the Superior Court within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.  
(Ord. passed 12-16-93)

#### **§ 151.98 VIOLATIONS.**

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

(B) *Penalties for transferring lots in unapproved subdivisions.*

(1) Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the county, thereafter subdivides his or her land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this chapter and recorded in the office

of the register of deeds, shall be ~~guilty of a misdemeanor~~ subject to the civil enforcement provisions of N.C.G.S. § 153A-123. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this chapter. (Ord. passed 12-16-93; Am. Ord. passed 7-28-97)

### **§ 151.99 PENALTY.**

~~(A) *Criminal penalties.* Any person violating any provisions of this chapter shall be guilty of a Class 3 misdemeanor and, upon conviction, shall be punished in accordance with G.S. § 14-4(a). The maximum fine for each offense shall not exceed \$500. Each day that the violation continues shall constitute a separate offense.~~

~~(B) *Civil penalties.* If any subdivision, development and/or land use is found to be in violation of this chapter, the County Governing Board may, in addition to all other remedies available either in law or in equity, impose institute a civil penalty in the amount of \$100 and bring any civil action or proceedings ~~to restrain, correct, or abate the violation, to prevent occupancy of the building, structure, or land, or to prevent any illegal act, conduct, business, or use in, or about, the premises.~~ In addition, the State Environmental Management Commission may assess civil penalties in accordance with G.S. § 143-215.6A. authorized by N.C.G.S. § 153A-123. Each day that the violation continues shall constitute a separate offense.~~

In addition, the State Environmental Management Commission may assess civil penalties in accordance with N.C.G.S. § 143-215.6A

(Ord. passed 12-16-93; Am. Ord. passed 1-3-22)

### **§ 151.100 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 151 originally adopted on December 16, 1993, and all subsequent amendments, and shall be effective on and after January 3, 2022.

**APPENDIX: EXISTING DEVELOPMENT**

It is possible to expand an existing business in a water supply watershed. ***EXISTING DEVELOPMENT*** is not required to be included in the density calculations. For example, in the balance of WS-III watersheds, you may expand your business to cover up to 24 percent of the lot area not already covered by impervious surfaces. In the critical area, the limit is 12 percent. In the balance of a WS-III watershed, assume you have a lot of 15,000 square feet, with an existing business and associated parking lot of 5,000 square feet. You want to find out how much of an addition is allowed under the rules. Subtract the 5,000 of ***EXISTING DEVELOPMENT*** from the lot, which leaves 10,000. Multiply 10,000 by 24 percent, which gives 2,400 square feet. Your addition can be 2,400 square feet of building, parking area, driveways, and the like. If this lot were in the critical area, your addition could be 1,200 square feet. New businesses can only cover a total of 24 percent of its property if it is in the balance of the watershed, and 12 percent if it is in the critical area. The buffer requirement must be met with both expansions and new developments. (Ord. passed 12-16-93; Am. Ord. passed 7-28-97)

## CHAPTER 152A: SUBDIVISION AND PRE-DEVELOPMENT

### Section

#### *General Provisions*

- 152A.01 [Title](#)
- 152A.02 [Authority and Enactment](#)
- 152A.03 [Jurisdiction](#)
- 152A.04 [Purpose](#)
- 152A.05 [Subdivision Defined](#)
- 152A.06 [Other Definitions](#)

#### *Approval of Subdivision Plats*

- 152A.20 [Approval of Subdivision Plats and Plans Required](#)
- 152A.21 [Procedure for Review of Site Plans](#)
- 152A.22 [Specifications for Preliminary and Final Site Plans](#)
- 152A.23 [Procedure for Review of Special, Minor and Major Subdivisions](#)
- 152A.24 [Certificates for Special, Minor and Major Subdivisions](#)
- 152A.25 [Specifications for Preliminary and Final Plats](#)
- 152A.26 [Phased Development](#)
- 152A.27 [Resubdivision Procedures](#)

#### *Development Standards*

- 152A.40 [General Requirements](#)
- 152A.41 [Road and Design Standards for Minor and Major Subdivisions](#)

#### *Installation of Improvements*

- 152A.50 [Permanent Reference Points](#)
- 152A.51 [Improvements](#)
- 152A.52 [Storm Water Drainage](#)
- 152A.53 [Guarantee of Improvements](#)

#### *Legal Provisions*

- 152A.60 [General Procedure for Plat Approval](#)
- 152A.61 [Administrator](#)
- 152A.62 [Administration Fee](#)
- 152A.63 [Variances](#)
- 152A.64 [Penalties for Violation](#)

152A.65 [Amendments](#)

152A.66 [Validity](#)

152A.67 [Abrogation](#)

152A.68 [Repeal of Existing Pre-Development Ordinance](#)

152A.69 [Effective Date and Revision of Original Ordinance](#)

[Appendix A](#): Application for a Variance

### ***GENERAL PROVISIONS***

#### **§ 152A.01 TITLE.**

This chapter shall be known and cited as the Pre-Development and Subdivision Control Ordinance of Haywood County, North Carolina, and may be referred to as the Subdivision Regulations.

#### **§ 152A.02 AUTHORITY AND ENACTMENT.**

Pursuant to the authority and provision conferred by the General Statutes of the State of North Carolina, Chapter 153A-121, Chapter 160D-201, and Chapter 970, 1986 Session Laws as amended by Chapter 282 of the 1993 Session Laws, the Board of County Commissioners of the County of Haywood hereby ordain and enact into law this chapter.  
(Ord. passed 10-7-02; Am. Ord. passed 7-19-21)

#### **§ 152A.03 JURISDICTION.**

This chapter shall apply to every subdivision or development in Haywood County which is located outside the corporate limits and planning and zoning jurisdiction of all municipalities as they exist from time to time.

#### **§ 152A.04 PURPOSE.**

The purpose of this chapter shall be:

(A) To guide and regulate the subdivision and development of land in such a manner as to meet the following requirements for orderly and harmonious growth:

(1) Land to be subdivided shall be of such character that it can be used safely without danger to health or peril from fire, flood, erosion, air and/or water pollution, or other menace.

(2) Proper provisions shall be made for drainage, water supply, sewerage, water quality, sedimentation control and other appropriate utilities.

(3) The proposed roads shall provide a safe, convenient and functional system for vehicular circulation and shall be of such width, grade, and location as to accommodate prospective traffic. Roads shall be so arranged as to afford adequate access for emergency vehicles and services.

(4) Land shall be subdivided and developed with due regard to topography so that the natural beauty of the land and vegetation shall be protected.

(B) To provide the County Commissioners, Planning Board, Planning Department, Tax Assessor, Land Records Office, and other local government agencies and officials with information regarding land development taking place in Haywood County. This information will assist county officials in projecting the need for various public programs and facilities, in estimating population growth, and in projecting revenues and expenditures.

**§ 152A.05 SUBDIVISION DEFINED.**

(A) A subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new road or a change in existing roads, and includes any unified residential development; however, the following are not included within this definition and are not subject to any regulations enacted pursuant to this chapter:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

(2) The division of land into parcels each of which is greater than 10 acres if no road right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for widening or opening roads or highways or for public transportation system corridors;

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no road right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations;

(5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes;

(6) The division of land into two or more parcels for the purpose of conveying all the resulting parcels or lots, with the exception of parcels retained by the grantor, to a grantee or grantees

who are in any degree of lineal kinship or to a grantee or grantees within three degrees of collateral kinship to the grantor, such division to be known as a *FAMILY SUBDIVISION*;

(7) The division of land pursuant to an order of a court of the General Court of Justice;

(8) The division of land for cemetery lots or burial plots;

(9) The division of land into no more than two parcels for the purpose of combining one of the parcels with an adjacent tract of land if the adjacent tract of land is in compliance with all the provisions of the county ordinance adopted pursuant to this act and the combining of the parcel and adjacent tract results in a newly created single ‘parcel’ for land records purposes; and

(10) The division of a tract in common ownership the entire area which is less than five acres. (Ord. passed 10-7-02; Am. Ord. passed 7-19-21)

#### § 152A.06 OTHER DEFINITIONS.

For the purpose of this Ordinance, certain words or terms used herein are defined as follows:

***ALL-WEATHER SURFACE ROAD.*** A roadbed that supports routine vehicular traffic and has a minimum thickness of six inches (6") of compacted crushed rock or stone, including dust.

***COMMUNITY SANITARY SEWER SYSTEM.*** A sanitary sewer system subject to the rules and regulations of the NC Department of Environment and Natural Resources.

***COMMUNITY WATER SYSTEM.*** A water system subject to the rules and regulations of the NC Department of Environment and Natural Resources.

***CUL-DE-SAC.*** Local roads with one (1) end open for vehicular access and the other end terminating in a vehicular turnaround. The length of the cul-de-sac road shall be measured along the center line from its intersection with the center line of the road from which it runs to the center of the cul-de-sac turnaround.

***DEVELOP.*** To convert land to a new purpose so as to use its resources, or to use the land for residential, commercial, or industrial purposes.

***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 to undertake development on that property.

***DEVELOPMENT.*** Unless the context clearly indicates otherwise, the term means: (a) the construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure; (b) excavation, grading, filling, clearing, or alteration of land; (c) the subdivision of land as defined in G.S. 160D-802; or (d) the initiation or substantial change in the

use of land or the intensity of use of land. However, development on land owned or managed by the federal government or the state or its political subdivisions is not included within this definition and is not subject to the provisions of this chapter.

**DEVELOPMENT APPROVAL.** An administrative or quasi-judicial approval, made pursuant to G. S. 160D 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, site plan approvals, and variances. The term also includes all other regulatory approvals required by regulations adopted pursuant to G.S. 160D or local ordinances, including plat approvals, permits issued and building permits issued.

**DEVELOPMENT REGULATION.** A unified development ordinance, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, housing code, State Building Code enforcement, or other regulation adopted pursuant to N.C. G.S. 160D or local ordinance or act that regulates land use or development.

**DRIVEWAY.** Begins at the property line of a lot abutting a public road, private road, easement, or private right-of-way, and leads to a building, use, or structure on that lot. A **DRIVEWAY** only serves a single building, use, or structure.

**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 except for the purposes of Article 12 of Chapter 160D (Minimum Housing Codes) it does not include any manufactured home, mobile home, or recreational vehicle used solely for seasonal vacation purpose.

**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.

**EASEMENT.** A grant by the property owner for the use by the public, a corporation, or person(s) of a strip of land for specified reasons.

**FAMILY SUBDIVISION.** The division of land into two or more parcels for the purpose of conveying all the resulting parcels or lots, with the exception of parcels retained by the grantor, to a grantee or grantees who are in any degree of lineal kinship or to a grantee or grantees within three degrees of collateral kinship to the grantor, both as described under G.S. §104A-1. By way of example, such degrees of kinship would include children, grandchildren, great-grandchildren, parents, grandparents, brothers and sisters, uncles and aunts, and nieces and nephews.

**FINAL PLAT.** A complete and exact plan of a development or subdivision prepared for final official review which, if approved, will be submitted to the Haywood County Land Records/GIS Office for approval and then to the Haywood County Register of Deeds for recording.

**FLOODWAY.** The channel of a river or other watercourse and the adjacent land areas which must be reserved in order to discharge the base flood (100-year flood) without cumulatively increasing the water surface elevation.

**IMPROVEMENTS.** Streets, roads and utilities.

**LAND-DISTURBING ACTIVITY.** Any activity as defined in G.S. Section §113A-52(6) that is undertaken on a tract comprising more than one (1) acre, if more than one-half (1/2) aggregated acre is uncovered; however, those land-disturbing activities for which the NC Sedimentation Control Commission is authorized to exercise exclusive regulatory jurisdiction pursuant to G.S. Section §113A-56(a) are not included within this definition and are not subject to any regulations enacted pursuant to this act.

**LOT.** A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development, or both. The word "lot" includes "plot", "parcel" or "tract."

**LOT OF RECORD.** A lot which has not been recombined or merged that is a part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds of Haywood County prior to adoption of this chapter (152A), or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter (152A) unless the lot has been recombined or merged thereafter.

**MAJOR SUBDIVISION.** A proposed subdivision where eleven (11) or more lots will result after the subdivision is complete.

**MINOR SUBDIVISION.** A proposed subdivision of land where four (4) to ten (10) lots will result after the subdivision is complete. One phase of planned development cannot be considered a minor subdivision unless the entire development does not exceed ten (10) lots.

**PLAT.** Includes the term map, plan, or replat; a map or plan of a parcel of land which is to be or which has been developed or subdivided.

**PRELIMINARY PLAT.** A proposed development plan or subdivision plat prepared for review and consideration prior to preparation of a final plat or plan.

**PRIVATE STREET OR ROAD.** An undedicated private right-of-way which affords access to abutting properties and requires a subdivision streets disclosure statement in accordance with G.S. §136-102.6.

**PUBLIC STREET OR ROAD.** A subdivision street or road dedicated to the public to provide ingress and egress to lots or parcels which have been laid out for the purpose of providing home sites, or other purposes, and such street or road shall be constructed according to the minimum construction standards of the Division of Highways, with the intent of requesting that it be added to the state maintained system.

**SITE PLAN.** A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include, but is not limited to, site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, utility lines and locations, parking, access points, roads and stormwater control facilities that are depicted to show compliance with all legally required development regulations applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision. A site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision.

**SPECIAL SUBDIVISION.** A proposed subdivision of ten (10) acres or less where three (3) or fewer lots on a new or existing private road will result after the subdivision is complete.

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

**TECHNICAL REVIEW COMMITTEE.** A review committee consisting of the County Planner, environmental health specialist supervisor, erosion control specialist, and other appointees. (Ord. passed 10-7-02; Am. Ord. passed 7-19-21)

**APPROVAL OF SUBDIVISION PLATS**

**§ 152A.20 APPROVAL OF SUBDIVISION PLATS AND PLANS REQUIRED.**

(A) Plats shall be prepared and approved pursuant to the provisions of this chapter whenever land is subdivided or otherwise developed. A final plat must be prepared, approved, and recorded pursuant to this chapter whenever a subdivision of land occurs or a plan prepared and approved whenever the development of land takes place. **Contracting for the sale of land does not require plat approval so long as such contract requires compliance with this ordinance prior to the transfer of title to the land and such requirement is a condition to enforceability of such contract.**

(B) No land disturbing or construction activity carried out in conjunction with development shall be commenced until the preliminary plat or plan is approved by the Planning Board of Haywood County or the Haywood County Planning Department. A building permit for work done in conjunction with a development or a lot in a subdivision shall not be issued until the final plat or plan is approved by the Planning Board of Haywood County or the Haywood County Planning Department. The Register of Deeds shall not file or record a plat of a subdivision or development subject to this chapter that has not been approved in accordance with these provisions and approved by the Haywood County Land Records/GIS Office.

**§ 152A.21 PROCEDURE FOR REVIEW OF SITE PLANS.**

(A) Preliminary Plan Submission and Review. The procedure for obtaining preliminary plan approval is as follows:

(1) The developer shall submit to the Haywood County Planning Department two (2) copies of a preliminary plan containing the requested information required in Section §152A.22 of this chapter.

(2) The Planning Department may request reports from the Haywood County Health Department, the Haywood County Inspections Department, the Haywood County Soil and Water Conservation District, and other county, state, or federal officials or agencies as deemed necessary.

(3) The Planning Department shall review the preliminary plan for general compliance with the requirements of this chapter and any other applicable county, state, or federal regulations, and shall discuss with the developer or his agent any changes deemed advisable in the proposed development, or any additional information necessary for approval of the site plan.

(4) The Planning Department shall approve, approve conditionally, or disapprove the preliminary plan and shall notify the developer of its decision regarding approval within ten (10) working days after the preliminary plat is submitted for review.

(B) Final Plan Submission and Review. Upon approval of the preliminary plan by the Planning Department, the developer may proceed with the preparation of the final plan and the installation of or arrangement for required improvements such as roads and utilities in accordance with the approved preliminary plan and the requirements of this chapter. Prior to approval of the final plan, the developer shall have installed the improvements specified in this chapter or guaranteed their installation as provided herein.

(1) The developer shall submit such copies of the final plan in hard copy or electronically as required by the Planning Department and furnish a final copy to the Haywood County Health Department (Environmental Health Section) and the Haywood County Addressing Office.

(2) The Planning Department shall approve or disapprove the final plan and shall notify the developer of its decision regarding final approval within ten (10) working days after the plan is submitted for review.

(3) The final plan can be prepared by a registered land surveyor, landscape architect or can be hand drawn by the developer.

(C) At the Planning Director's discretion a preliminary or final plan may be submitted to the Haywood County Planning Board for its review and recommendation.  
(Ord. passed 10-7-02; Am. Ord. passed 7-19-21)

**§ 152A.22 SPECIFICATIONS FOR PRELIMINARY AND FINAL SITE PLANS.**

The preliminary and final plans shall depict or contain the following information. An “\*” indicates that the information is required for preliminary plan approval only. Where “proposed/actual” is noted, the proposed information shall be shown on the preliminary plan and the actual information shall be shown on the final plan. Preliminary and final plans shall be clearly and legibly drawn at a scale of not less than two hundred feet (200’) to one inch (1”).

**(A) Title Block**

- name and address of owner of record
- name of development
- location (township, county, state)
- date(s) of plan(s)
- graphic scale and written scale
- parcel identification number and/or deed book and page

**(B) Roads**

- existing and platted roads on abutting properties and in the proposed subdivision
- rights-of-way, location and dimensions (proposed/actual)
- road name(s)

**(C) Utilities**

- utility and other easements of record on and abutting to the development
- transmission lines
- approximate location of natural gas lines
- sanitary sewers, location and size if community systems are proposed (proposed/actual)
- water lines, location and size, if community systems are proposed (proposed/actual)
- storm sewers, culverts, detention ponds, and other drainage facilities, if any (proposed/actual)
- community well (2 or more connections) location showing 100’ radius on the property or recorded easement for encroachment on adjacent property

**(D) Site Calculations**

- acreage in total tract to be developed
- acreage in phase if different from total acreage

**(E) Other Details**

- sketch vicinity map showing the relationship between the proposed development and surrounding area

- north arrow
- the location and name of all water courses, as identified on U.S.G.S. 7.5 minute series (topographic) maps
- any natural features affecting the site
- the location of the special flood hazard area (floodway and 100-year flood boundaries), if applicable
- note all lots or building sites with an elevation of 3,000 feet above sea level or greater
- the location of any cemetery
- existing buildings or structures, railroads, and bridges on the land to be developed
- approximate lot lines and distances, and unit numbers (\*)
- names of adjacent property owners
- the existing uses of the land within the proposed development
- proposed parks or open spaces
- the accurate location and description of all monuments, reference markers and property and lot corners

(F) A written statement from the NC Department of Environment and Natural Resources permitting plans for the community sanitary sewer system, if applicable (\*).

(G) A copy of the erosion control plan and a written statement from the Haywood County Erosion Control Office stating that an erosion control plan has been submitted and approved for the project, if applicable (\*).

(H) A written statement from the NC Department of Environment and Natural Resources approving and permitting plans for a community water system, if applicable (\*).

(I) For developments which are not served by municipal sewer, the Planning Department shall request reports from the Haywood County Health Department. These reports must indicate that each structure can be served by a ground absorption sewage disposal system, or other state approved sewage disposal system, and has a potential potable water supply. If a dwelling with an existing septic system is present on any proposed lot then a record of the system must be validated which indicates the system is in compliance with the rules that were in force at the time the system was installed. All existing systems shall have 100% repair (reserve) area. Any non-compliant system must be evaluated by the Health Department and the appropriate permit issued.

(J) A written statement from the District Engineer of the Division of Highways of NC Department of Transportation certifying approval of any proposed public road and highway plans, if applicable.

(K) Any other information considered by the developer, the Planning Board, and/or Planning Director to be pertinent to the review of the plan (\*).

(L) A certificate for approval, to read as follows:

“I hereby certify that this plan was reviewed and approved by the Haywood County Planner for recording in the Register of Deeds Office of Haywood County.

\_\_\_\_\_  
Haywood County Planner                      Date”

OR

“I certify that the plan shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Administrator for recording in the Register of Deeds office.

\_\_\_\_\_  
Watershed Administrator                      Date

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

**§ 152A.23 PROCEDURE FOR REVIEW OF SPECIAL, MINOR AND MAJOR SUBDIVISIONS.**

(A) Preliminary Plat Submission and Review. The procedure for obtaining preliminary plat approval is as follows:

(1) The subdivider shall submit to the Haywood County Planning Department two (2) copies of a preliminary plat containing the requested information required in Section §152A.25 of this chapter.

(2) The Planning Department may request reports from the Haywood County Health Department, the Haywood County Inspections Department, the Haywood County Soil and Water Conservation District, and other county, state, or federal officials or agencies as deemed necessary.

(3) The Planning Department shall review the preliminary plat for general compliance with the requirements of this chapter and any other applicable county, state, or federal regulations, and shall discuss with the developer or his agent any changes deemed advisable in the proposed development, or any additional information necessary for approval of the special, minor or major subdivision.

(4) The Planning Department shall approve, approve conditionally, or disapprove the preliminary plat and shall notify the developer of its decision regarding approval within ten (10) working days after the preliminary plat is submitted for review.

(B) Final Plat Submission and Review. Upon approval of the preliminary plat by the Planning Department, the developer may proceed with the preparation of the final plat and the installation of or

arrangement for required improvements such as roads and utilities in accordance with the approved preliminary plat and the requirements of §152A.40 through §152A.41 of this chapter. Prior to approval of the final plat, the subdivider shall have installed the improvements specified in this chapter or guaranteed their installation as provided herein.

(1) The developer shall submit such copies of the final plat to the Planning Department as it shall require, in hard copy or electronically. The Planning Department shall affix its approval (physically or electronically) to the final plat. A final copy will be presented to the Haywood County Health Department (Environmental Health Section) and the Haywood County Addressing Office.

(2) The Planning Department shall approve or disapprove the final plat and shall notify the developer of its decision regarding final approval within ten (10) working days after the plat is submitted for review.

(3) The final plat shall be prepared by a professional land surveyor currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in G.S. §47-30 as amended, and as set forth in the Standards of Practice for Land Surveying in North Carolina, and in Section §152A.25 of this chapter.

(C) At the Planning Director's discretion a preliminary or final plat may be submitted to the Haywood County Planning Board for its review and consideration.  
(Ord. passed 10-7-02; Am. Ord. passed 7-19-21)

**§ 152A.24 CERTIFICATES FOR SPECIAL, MINOR AND MAJOR SUBDIVISIONS.**

The following signed certificates shall be shown on the original tracing and all copies of the final plat:

(A) Certificate of Ownership and Dedication

I (we) hereby certify that I am (we are) the owner(s) of the property located within the subdivision-regulation jurisdiction of Haywood County as shown and described hereon, and that I (we) hereby adopt this plan of subdivision with my (our) free consent, and dedicate all roads and other sites and easements to public or private use as noted in the Disclosure of Private Roadways, where applicable.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OWNER(s)

(B) Certification of Private Roads (if applicable)

The roads in this subdivision are private. The property owners are responsible for maintaining and repairing the roads as well as paying the costs thereof.

(C) Certificate of Survey and Accuracy

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

I, \_\_\_\_\_ certify that this plat was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book \_\_\_\_\_, Page \_\_\_\_\_); that the precision of the survey before adjusting was one (1) part in \_\_\_\_\_ as calculated by latitudes and departures, and that this map was prepared in accordance with G.S. §47-30, as amended.

Witness my original signature, license number, and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Official Seal \_\_\_\_\_  
Professional Land Surveyor License Number \_\_\_\_\_

(D) Certification of Road Grades and Suitability (not required for Special Subdivision)

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

I \_\_\_\_\_, certify that the newly constructed or proposed road grades and slopes were (calculated by me) (calculated under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) and do not exceed twenty-five percent (25%).

Witness my original signature, license number, and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Official Seal \_\_\_\_\_  
Professional Land Surveyor or License Number \_\_\_\_\_  
Professional Engineer

(E) Certificate of Approvals

“I hereby certify that this plat was reviewed and approved by the Haywood County Planner for recording in the Register of Deeds Office of Haywood County.

\_\_\_\_\_  
Haywood County Planner Date”

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

\_\_\_\_\_  
Watershed Administrator                      Date

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

(F) Review Officer Certificate

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

I, \_\_\_\_\_, Review Officer of Haywood County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording for which the review officer has responsibility as provided by law.

\_\_\_\_\_  
Review Officer                                      Date

(G) Such approval shall be **VOID** unless the final plat is offered for filing and recording in the Office of the Register of Deeds of Haywood County within ninety (90) days from the date of Planning Department approval.

(H) If the Planning Department fails to act on the preliminary or final plat, in writing, within ten (10) working days the subdivider may seek approval of the preliminary or final plat at the next regularly scheduled meeting of the Planning Board.  
(Ord. passed 10-7-02; Am. Ord. passed 7-19-21)

**§ 152A.25 SPECIFICATIONS FOR PRELIMINARY AND FINAL PLATS.**

The preliminary and final plats shall depict or contain the following information. An "\*" indicates that the information is required for preliminary plat approval only. Where "proposed/actual" is noted, the proposed information shall be shown on the preliminary plat and the actual information shall be shown on the final plat. Preliminary and final plats shall be clearly and legibly drawn at a scale of not less than two hundred feet (200') to one inch (1") and shall be drawn at a size and in such a format as acceptable to the Register of Deeds of Haywood County for recording in that office.

(A) Title Block

- name and address of owner of record

- name of subdivision
- location (township, county, state)
- date(s) of survey(s)
- graphic scale and written scale
- name, address, license number, and seal of professional land surveyor
- parcel identification number and/or deed book and page

### (B) Roads

- existing and platted roads on abutting properties and in the proposed subdivision
- rights-of-way, location and dimensions (proposed/actual)
- road name(s)

### (C) Utilities

- utility and other easements of record on and abutting to the subdivision
- transmission lines
- approximate location of natural gas lines
- sanitary sewers, location and size if community systems are proposed (proposed/actual)
- water lines, location and size, if community systems are proposed (proposed/actual)
- storm sewers, culverts, detention ponds, and other drainage facilities, if any (proposed/actual)
- community well (2 or more connections) location showing 100' radius on the property or recorded easement for encroachment on adjacent property

### (D) Site Calculations

- acreage in total tract to be subdivided
- total number of lots
- linear feet in roads
- area of each lot in acres

### (E) Other Details

- sketch vicinity map showing the relationship between the proposed subdivision and surrounding area
- exact boundaries of the tract, shown with bearings and distances as required by G.S. §47-30, as amended (proposed/actual)
- north arrow
- the location and name of all water courses, as identified on U.S.G.S. 7.5 minute series (topographic) maps
- any natural features affecting the site
- the location of the special flood hazard area (floodway and 100-year flood boundaries), if applicable

- note all lots or building sites with an elevation of 3,000 feet above sea level or greater
- the location of any cemetery
- existing buildings or structures, railroads, and bridges on the land to be subdivided
- approximate lot lines and distances, and lot numbers (\*)
- lot lines with bearings and distances and lot numbers
- names of adjacent property owners
- the existing uses of the land within the proposed subdivision
- proposed parks or open spaces
- location of control corners
- the accurate location and description of all monuments, reference markers and property and lot corners

(F) A written statement from the NC Department of Environment and Natural Resources permitting plans for the community sanitary sewer system, if applicable (\*).

(G) A written statement from the NC Department of Environment and Natural Resources approving and permitting plans for a community water system, if applicable (\*).

(H) A copy of the erosion control plan and a written statement from the Haywood County Erosion Control Office stating that an erosion control plan has been submitted and approved for the project, if applicable (\*).

(I) For subdivisions, which are not served by municipal sewer, the Planning Department shall request reports from the Haywood County Health Department. These reports must indicate that each lot can be served by a ground absorption sewage disposal system, or other state approved sewage disposal system, and has a potential potable water supply. (Final Plat Only)

If a dwelling with an existing septic system is present on any proposed lot then a record of the system must be validated which indicates the system is in compliance with the rules that were in force at the time the system was installed. All existing systems shall have 100% repair (reserve) area. Any non-compliant system must be evaluated by the Health Department and the appropriate permit issued.

(J) A subdivision roads disclosure statement prepared in accordance with G.S. §136-102.6(f) shall be presented with both the preliminary and final plat.

(K) A written statement from the District Engineer of the Division of Highways of NC Department of Transportation certifying approval of any proposed public road and highway plans, if applicable.

(L) Any other information considered by the subdivider, the Planning Board, and/or Planning Director to be pertinent to the review of the plat (\*).

(M) All certifications required in Section §152A.24 of this chapter.  
(Ord. passed 10-7-02; Am. Ord. passed 7-19-21)

**§ 152A.26 PHASED DEVELOPMENT.**

If a developer proposes that a subdivision or development will be constructed in phases, the following procedure shall apply:

(A) A master plan showing the entire proposed subdivision or development and the phases of development, proposed density, proposed type and location of utilities, and proposed development timetable shall be submitted to the Planning Department for approval.

(B) Each phase of development shall be preceded by submission and approval of a preliminary plat or plan. The master plan may be submitted prior to or simultaneously with submission of the preliminary plat or plan for the first phase of development.

(C) As each phase is completed, a final plat or plan must be submitted and approved for that phase.

(D) Approval of the master plan need not be renewed unless significant design changes or density increases are proposed.

**§ 152A.27 RESUBDIVISION PROCEDURES.**

For any replatting or resubdivision of land, the same procedures, rules, and regulations shall apply as prescribed in Section §152A.23 (A).

***DEVELOPMENT STANDARDS***

**§ 152A.40 GENERAL REQUIREMENTS.**

(A) Conformity to Existing Maps or Plans. The plat of a subdivision shall conform to any official map or plan adopted by the Board of County Commissioners, existing on the date of enactment of this chapter, or thereafter adopted.

(B) Continuation of Adjoining Road Systems. The proposed road or road layout shall be coordinated with the existing road system of the surrounding area. Where possible, proposed roads shall be the extension of existing roads.

(C) Road Names. Proposed roads which are obviously in alignment with existing roads should be given the same name. In assigning new names, duplication shall be avoided and in no case shall the proposed name be phonetically similar to existing names irrespective of the use of a suffix such as

road, drive, place, court, etc. All proposed road names and signs shall be approved by the Haywood County Addressing Coordinator.

(D) Private Roads. Private roads may be platted in any subdivision and shall conform to the standards set forth in this chapter. Private roads shall be set out in protective covenants, deeds, or on plats or any combination of those methods, and shall clearly state that the State and/or County will not be obligated to take over or maintain the road.

(E) Lots. Lot size shall be regulated only to the extent required by the Haywood County Health Department.

(F) Flood Damage. All subdivision proposals shall be consistent with the need to minimize flood damage as provided for in the Haywood County Flood Damage Prevention Ordinance. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems shall be located and constructed so as to minimize damage to utilities from flooding.

(G) Subdivision Name. The subdivision name shall be approved by the Planning Department. There shall be no duplication or direct conflict with an existing subdivision name.

#### **§ 152A.41 ROAD AND DESIGN STANDARDS FOR MINOR AND MAJOR SUBDIVISIONS.**

The Subdivision Roads Minimum Construction Standards are as set forth in this chapter and as shown in Schedule I.

**NOTE: Special Subdivisions as defined in this chapter shall not be required to comply with §152A.41 (Road and Design Standards)**

**NOTE: The combination or recombination of portions of previously subdivided and recorded lots shall not be required to comply with §152A.41 (Road and Design Standards) (Am. Ord. passed 12-15-03)**

**NOTE: Private roads constructed to the minimum standards of this chapter WILL NOT meet NC Department of Transportation minimum subdivision road requirements. As a result, the NC Department of Transportation MAY NOT accept these roads without additional improvement(s).**

(A) Road Standards. Subdivision roads may be designated public or private.

(1) Public subdivision roads shall be built to minimum construction standards of the NC Department of Transportation as required by G.S. §136-102.6. The public subdivision road standards are contained in NC Division of Highways Subdivision Roads Minimum Construction Standards.

(2) All minor and major subdivision roads intersecting a state maintained road shall have a stop sign that conforms with NC Department of Transportation specifications, installed by the

developer and maintained by the developer or homeowners association. After the North Carolina Department of Transportation accepts the subdivision road(s), the developer or homeowners association shall not be responsible for the maintenance of road name and stop signs.

(3) Private minor and major subdivision roads shall be built to minimum construction standards set forth in Schedule I of this chapter.

(4) No road in an area subject to flooding shall be approved if it is more than two feet (2') below the elevation of a 100-year flood. The Haywood County Planner and/or Planning Board may require, where necessary, profiles and elevations of roads for areas subject to flooding. Fill may be used for roads provided such fill does not increase flood heights. Drainage openings for roads in areas subject to flooding shall be provided and shall be so designed as to not restrict the flow of water and increase flood heights.

(5) Every road shall be designed to accommodate a ten (10) year storm water run-off by natural or artificial means.

(B) Road Design. Private subdivision roads shall meet the following minimum road design standards:

(1) New Road Right-of-Way Width. All subdivision roads shall have a minimum right-of-way of forty-five feet (45') unless the road is completed prior to filing the final plat for approval, then a thirty foot (30') right-of-way along the centerline shall be permitted. **NOTE: NC Department of Transportation requires a fifty foot (50') minimum right-of-way for a dead-end road more than 2,500 feet in length or a loop road more than one (1) mile in length.**

(2) Previously Platted Road Right-of-Way Width. Where a right-of-way less than forty-five feet (45') was recorded or platted prior to the adoption of this chapter and a forty-five foot (45') right-of-way is not now obtainable for the purpose of accessing the subdivision of land for either a minor or major subdivision, the following minimum standards shall be met by the developer:

(a) The developer or his assignee shall submit a copy of the recorded plat or deed describing and identifying the right-of-way.

(b) The access road shall be a minimum twelve foot (12') all-weather surface road for a minor subdivision or an eighteen foot (18') all-weather surface road for a major subdivision unless the recorded right-of-way will not allow these minimum standards.

(c) A disclosure statement shall be placed on the final plat stating "This subdivision is accessed by a road which does not have a forty-five foot (45') minimum right-of-way and/or does not have the minimum recommended roadbed width. Access to homes within the subdivision may be limited. The NC Department of Transportation is unlikely to accept and maintain roads within the subdivision as public road(s)."

(3) Cul-de-sacs. The required turnaround on a dead-end road in a subdivision shall have an unobstructed roadway radius of not less than twenty-five feet (25'). If the road length does not exceed fifteen hundred feet (1,500') and if construction difficulties will not permit a turnaround, the use of a modified "Y" or a "T" with one (1) extension extending at least twenty-five feet (25') and the other extending a minimum of fifty feet (50') and a maximum of one hundred feet (100') which will allow a vehicle with a wheel base of at least twenty-five feet (25') to complete a turning movement with a maximum of one (1) backing movement, shall be permitted.

(4) Roads Grades. Maximum road grades shall be twenty percent (20%). In extreme cases, where the terrain prohibits a lesser grade to attain access to a nearby area, a maximum grade of twenty-five percent (25%) is permissible if a professional engineer, currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors, designs and certifies grade and slope stability of the portion from 20.01% to 25%. For any road containing grade(s) exceeding twenty percent (20%), the following minimum standards shall be met by the developer:

(a) The developer shall submit a report by a professional engineer, with civil engineering qualifications, or professional land surveyor currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors, stating that there are no reasonable alternative routes to access the adjacent area which do not exceed twenty percent (20%) grade.

(b) Any road exceeding fifteen percent (15%) grade shall meet NC Department of Transportation minimum construction and paving (bituminous) specifications for the length exceeding fifteen percent (15%) grade plus an additional three hundred feet (300') on each side of the length exceeding fifteen percent (15%) grade or until the road grade reaches eight percent (8%) over a fifty foot (50') section. The least distance shall be enforced. A professional engineer, with civil engineering qualifications, or registered land surveyor currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors shall identify on the plan(s) the road(s) which have grades exceeding fifteen percent (15%), the point(s) where the fifteen percent (15%) grade begins and terminates, and the additional three hundred foot (300') segments to be paved on each side. Should it be necessary to go beyond property lines to reach a distance of three hundred feet (300') or for the purpose of measuring or determining the existence of an average grade of eight percent (8%) over a fifty foot (50') section of road, only that portion of the road within the subject property is required to be paved.

(Ord. passed 10-7-02; Am. Ord. passed 12-15-03)

(c) A disclosure statement shall be placed on the final plat stating "This subdivision contains roads which exceed fifteen percent (15%) grade(s). Access to homes within the subdivision may be limited. The NC Department of Transportation is unlikely to accept and maintain roads within the subdivision as public road(s)."

(C) Connections with State Road System. If a new subdivision road to be dedicated as public or private will connect to a state system road, a permit authorizing construction on state right-of-way may be required from the Division of Highways before beginning construction. If required,

applications shall be made to the District Engineer of the NC Department of Transportation having jurisdiction in this area.

(D) Intersections. When a new subdivision road connects to a state maintained road, the design standards of the NC Department of Transportation for intersections shall be required.

## SCHEDULE I

**DESIGN CRITERIA FOR PRIVATE ROADS**

<b>Minimum Road Right of Way Width Shoulder Section</b>	<b>45'</b>
<b>(If road is completed prior to filing final plat)</b>	<b>30'</b>
<b>Minimum Road-Bed Width for Eleven (11) Lots or More Shoulder Section</b>	<b>18'</b>
<b>Minimum Road-Bed Width for Ten (10) Lots or Less Shoulder Section</b>	<b>12'</b>
<b>Maximum Grade (NC DOT Classification-Hill Terrain)</b>	<b>20%</b>
<b>(Designed and certified by Professional Engineer)</b>	<b>25%</b>
<b>Minimum Shoulder Width Shoulder Section</b>	<b>2'</b>
<b>Minimum Cul-de-Sac Radius Right of Way Shoulder Section</b>	<b>50'</b>
<b>Minimum Cul-de-Sac Radius for Roadbed Turning Radius Shoulder Section</b>	<b>25'</b>

**\*Any road exceeding fifteen percent (15%) grade shall meet NC Department of Transportation minimum construction and paving (bituminous) specifications for the length exceeding fifteen percent (15%) grade plus an additional three hundred feet (300') on each side of the length exceeding fifteen percent (15%) grade or until the road grade reaches eight percent (8%) over a fifty foot (50') section.  
(Am. Ord. passed 12-15-03)**

*INSTALLATION OF IMPROVEMENTS***§ 152A.50 PERMANENT REFERENCE POINTS.**

Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with G.S. sections 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended.

(A) Monuments. With each block of a subdivision at least two (2) monuments designated as control corners shall be installed. The surveyor shall install additional monuments as required. All monuments shall be constructed of concrete and shall be four inches (4") in diameter or square at the top and six inches (6") at the bottom and not less than three feet (3') in length. Each monument shall have imbedded in its top, or attached by suitable means, a non-corroding metal plate which is marked plainly with the point, the surveyor's registration number, the month and year it was installed and the word "monument" or "control corner." A monument shall be set at least thirty inches (30") in the ground with at least six inches (6") exposed above the ground unless this requirement is impractical.

(B) Property Markers. A steel or wrought iron pipe or the equivalent, not less than three-fourths inch (3/4") in diameter and at least thirty inches (30") in length, shall be set at all corners where practical or where the ground will allow, except those located by monuments or natural corners.

**§ 152A.51 IMPROVEMENTS.**

Approval of the final plat shall be subject to the subdivider having guaranteed, to the satisfaction of Haywood County through the ordinance administrator, the installation of said improvements. Haywood County through the ordinance administrator reserves the right to inspect, reject, stop, or otherwise cease the construction of all service facilities or improvements in the event the same are not being constructed in accordance with the plans, specification standards, policies, or other requirements of this chapter.

(A) Grading. All roads shall be graded to their full roadbed width of eighteen feet (18'), or twelve feet (12') for subdivisions with four (4) to ten (10) lots and for an additional two feet (2') on each side of the roadbed. Finished grade, cross section, and profiles shall be certified by a professional land surveyor or professional engineer, with civil engineering qualifications, currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors.

(1) Preparation. Before grading is started, the required roadbed width area shall be first cleared of all stumps, roots, brush and other objectionable materials.

(2) Cuts. All tree stumps, boulders, and other obstructions within the proposed roadbed width shall be removed to a depth of one foot (1') below the subgrade.

(3) Fill. All suitable material from roadbed cuts may be used in the construction of fills, approaches, or at other places as needed. The fill shall be installed and compacted.

(B) Installation of Utilities. All public or private water and sewerage systems shall be installed and shall meet the requirements of the Haywood County Health Department or other governmental authorities having jurisdiction thereof.

(C) Roadbed Base. After preparation of the subgrade, the roadbed shall be surfaced with material of no lower classification than crushed rock, stone, or gravel. The size of the crushed rock or stone shall be from one and one-half inches (1 1/2") down, including dust. Spreading of the stone shall be done uniformly over the area to be covered by means of appropriate spreading devices and shall not be dumped in piles. The stone shall be rolled until thoroughly compacted. The compacted thickness of the stone roadbed shall be no less than six inches (6"). Finished roadbed base shall be certified by a professional land surveyor or professional engineer.

#### **§ 152A.52 STORM WATER DRAINAGE.**

The subdivider shall provide disposal of surface water by natural or artificial means subject to the following standards of the NC Department of Transportation, as reflected in Handbook for the Design of Highway Surface Drainage Structures, (1973) subject to review by the Planning Board:

(A) No surface water shall be channeled or directed into a sanitary sewer.

(B) Where feasible, the subdivider shall connect to an existing storm drainage system.

(C) Where an existing storm drainage system cannot feasibly be provided for the subdivision, a surface drainage system shall be provided to protect the development from water damage.

(D) Anyone constructing a dam or impoundment within the subdivision must comply with the NC Dam Safety Law of 1967 and the NC Administrative Code Title 15, Subchapter 2K.

(E) In all areas of special flood hazards, all subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

#### **§ 152A.53 GUARANTEE OF IMPROVEMENTS.**

Where the required roadbed and utility improvements have not been completed prior to the submission of the final plat for approval, the approval of said plat shall be subject to the subdivider guaranteeing the installation of the improvements within a period of time specified by the Planning Director after consulting with the developer or his engineer(s). Either of the methods described below may be used to guarantee improvements:

(A) Filing a performance or surety bond or an irrevocable standby letter of credit in the amount of one hundred twenty-five percent (125%) of the cost to complete the work as determined by a

professional engineer with civil engineering qualifications currently licensed in the State of North Carolina or a North Carolina State licensed grading contractor, at the developer's expense.

(B) Depositing or placing in escrow, a certified check or cash in an amount equal to one hundred twenty-five percent (125%) of the amount in Section §152A.53 (A). Portions of the deposit may be released as work progresses as specified by the Planning Director after consulting with the developer and his engineer.

***LEGAL PROVISIONS***

**§ 152A.60 GENERAL PROCEDURE FOR PLAT APPROVAL.**

(A) After the effective date of this chapter, no plat of a subdivision of land or plan of a development within Haywood County's jurisdiction shall be filed or recorded until it has been submitted to and approved by the Haywood County Planning Board and/or the Planning Director, and until this approval is entered in writing on the face of the plat by the Chairman of the Planning Board or the Planning Director.

(B) The Register of Deeds shall not file or record a plat of a subdivision of land located within the planning jurisdiction of the county that has not been approved in accordance with these provisions and approved by the Haywood County Land Records/GIS Office.

(C) Approval of a special, minor or major preliminary subdivision plat by either the Planning Department or the Planning Board shall be effective for a period not to exceed one (1) year and thereafter expire and be considered null and void. A six (6) month extension may be granted by the Planning Department or Planning Board when reasonable cause is shown.

**§ 152A.61 ADMINISTRATOR.**

The Haywood County Planning Department by and through the Haywood County Planning Director is hereby designated a planning agency pursuant to G.S. Chapter 160D-301 and is appointed to serve as the subdivision administrator.

(Ord. passed 10-7-02; Am. Ord. passed 7-19-21)

**§ 152A.62 ADMINISTRATION FEE.**

A fee for reviewing and approving subdivisions and major subdivisions may be established by the Haywood County Commissioners and posted in the Planning Department.

**§ 152A.63 VARIANCES.**

Where, because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this chapter would cause an unnecessary hardship, the Planning Board may authorize a variance, if such variance can be made without destroying the intent of this chapter. Any variance thus authorized is required to be entered in writing in the minutes of the meeting of the Planning Board and the reasoning on which the departure was justified set forth.

The acts of the Planning Board in considering and determining a request for a variance shall be quasi-judicial proceedings, to be conducted in accordance with N.C. G.S. 160D-406 and the provisions of this Chapter.

(A) No hearing shall be held by the Board unless written notice thereof is filed within thirty (30) days after the interested party or parties receive the decision or by the Subdivision and Pre-Development Ordinance Administrator or the aggrieved party or parties receive constructive notice to the decision. Applications shall be filed with the Subdivision and Pre-Development Ordinance Administrator, who shall act as Clerk for the Board in receiving this notice; it shall be the duty of the Administrator to notify all the Board members as soon as possible of the application. All applications for a variance shall be made on the form entitled “Application for a Variance from the Haywood County Code of Ordinances, Chapter 152A: Subdivision and Pre-Development”, as set forth in Appendix A. All information required on the form shall be complete before an application shall be considered as having been filed.

(B) After receipt from the Subdivision and Pre-Development Ordinance Administrator of the completed Application for a Variance, the Chairman shall schedule the time for the hearing, which shall be at the next regularly scheduled meeting. The application must be filed a minimum of fourteen (14) days prior to the next regularly scheduled meeting in order to be placed on that agenda.

The Clerk shall give notice of the hearing by mailing notices of the hearing to adjoining property owners and other parties to the action at least five (5) days prior to the hearing.

(1) Conduct of Hearing: Parties or their attorney shall appear in person at the hearing. The order of business for each hearing shall be as follows:

(a) The Chairman, or such person as he shall direct, shall give a preliminary statement of the case.

(b) At the discretion of the Chairman, witnesses will be sworn in.

(c) The applicant shall present the arguments and support of his case or application. Witnesses in favor of the applicant's request may be called and factual evidence submitted.

(d) Applicants and proponents may be questioned by the Board.

(e) Persons opposed to granting the application shall present their argument. Witnesses may be called and actual evidence submitted in opposition.

(f) Opponents may be questioned by the Board.

(g) Opponents may be allowed to cross examine all witnesses.

(h) The applicant may be allowed to inspect all evidence offered against him/her.

(i) Both sides will be permitted to present rebuttals to opposing testimony.

(j) The Board may, at its discretion, view the premises and obtain additional facts of matter before arriving at a determination of the case.

(k) The Board shall discuss the application and develop their conclusions.

(l) Motion.

(2) Decisions:

(a) Vote: The concurring vote of four-fifths of the attending membership of the Board shall be necessary to effect any variation from terms of the Ordinance.

Members of the Planning Board shall not vote on a variance request where the outcome of the matter is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member shall also not vote where the landowner is a person with whom the member has a close familial, business or other associational relationship.

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

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

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

is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of his property.

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

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

d. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance and then comes to the Board for relief.

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

2. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.

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

(c) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this Haywood County Code of Ordinances Chapter 152A: Subdivision and Pre-Development.

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

1. Time: Decisions by the Board shall be made not more than thirty-six (36) days following the date of the hearing.

2. Form: Written notice of the decision and the reasons therefore in a case shall be given to the applicant by the Clerk as soon as practicable after the case has been decided. The final decision of the Planning Board shall be shown in the record of the case as entered in the Minutes of the Board, and signed by the Chairman and the Clerk upon approval of the Minutes of the Board. The Minutes shall record the reason for the decision, the summary of the evidence introduced, and the findings of fact and conclusions of the law made by the Board.

(3) Public Record of Decisions: The decisions of the Board, as filed in its Minutes, shall be a public record, available for inspection at all reasonable times. Minutes shall be kept by the Clerk

who shall make them available to the public. Every decision of the Haywood County Planning Board shall be filed in the office of the Subdivision and Pre-Development Ordinance Administrator and a written copy thereof shall be delivered to the applicant and adjacent property owners by personal service or registered mail.

(4) Decisions and Appeals: Every decision by the Planning Board regarding a variance from Haywood County Code of Ordinances Chapter 152A: Subdivision and Pre-Development shall be subject to the review by the Haywood County Board of Commissioners, to be conducted as a quasi-judicial proceeding under N.C. G.S. 160D-406. All appeals shall be taken to the Haywood County Board of Commissioners within thirty (30) days after the decision of the Planning Board is filed in the Office of the Subdivision and Pre-Development Administrator or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.

Members of the Board of Commissioners shall not vote on a variance request where the outcome of the matter is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member shall also not vote where the landowner is a person with whom the member has a close familial, business or other associational relationship.

Any person aggrieved by the decision of the Haywood County Board of Commissioners or any taxpayer may appeal the decision to the Superior Court, to be conducted as described in N.C. G.S. 160D-406(k) . All appeals shall be taken to the Superior Court within thirty (30) days after the decision of the Haywood County Board of Commissioners is filed in the Office of the Clerk or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.

(Ord. passed 10-7-02; Am. Ord. passed 7-19-21)

**§ 152A.64 PENALTIES FOR VIOLATION.**

After the effective date of this chapter, any person who, being the owner or agent of the owner of any land located within the planning jurisdiction of Haywood County, subdivides or develops land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of land before the plat has been properly approved under the terms of this chapter and recorded in the Office of the Haywood County Register of Deeds, shall be ~~guilty of a misdemeanor~~subject to the civil enforcement provisions of N.C.G.S. § 153A-123.

**The description by metes and bounds in the instrument of transfer shall not exempt the transactions from this penalty. Contracting for the sale of land is not subject to this penalty so long as such contract requires compliance with this ordinance prior to the transfer of title to the land and such requirement is a condition to enforceability of such contract.**

~~-Haywood County through its attorney or other official designated by the Board of County Commissioners may bring suit to enjoin any illegal subdivision, transfer, or sale of land. Further, violators of this chapter shall be subject, upon conviction, to fine and/or imprisonment as provided by~~

~~G.S. §14-4~~. Each day that a plat or property is not in compliance with this chapter shall constitute a separate and distinct offense.

~~(Ord. passed 10-7-02; Am. Ord. passed 1-3-22)~~

#### **§ 152A.65 AMENDMENTS.**

(A) The Board of County Commissioners may from time to time amend the terms of this chapter, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the Planning Board for review and recommendation. The Planning Board shall have thirty (30) working days from the time the proposed amendment is submitted to it within which to submit its recommendation to the County Commissioners. If the Planning Board fails to submit a report within the specified time, it shall be deemed to have recommended approval of the amendment.

(B) No amendment shall be adopted by the Board of County Commissioners until they have held a public hearing on the amendment. Notice of the hearing shall be published in a newspaper of general circulation in Haywood County at least once a week for two (2) successive calendar weeks prior to the hearing in accordance with G.S. §153A-323.

#### **§ 152A.66 VALIDITY.**

Should any section or provision of this chapter be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this chapter as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

#### **§ 152A.67 ABROGATION.**

It is not intended that this chapter repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations, or permits previously adopted or issued pursuant to law. However, where this chapter imposes greater restrictions, the provisions of this chapter shall govern.

#### **§ 152A.68 REPEAL OF EXISTING PRE-DEVELOPMENT ORDINANCE.**

This chapter in part carries forth by re-enactment some of the provisions of the Pre-Development Ordinance of Haywood County, previously adopted, and it is not the intention to repeal but rather re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced. All provisions of the Pre-Development Ordinance, which are not re-enacted herein, are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of the Pre-Development Ordinance heretofore in effect, which are now pending in any courts of the State of North Carolina or United States of America, shall not be abated or abandoned by reason of the adoption of this chapter, but shall be prosecuted to their finality the same as if this chapter had not been adopted; and all violations of the existing chapter,

prosecutions for which have not been instituted, may be hereafter construed as to abandon, abate, or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

**§ 152A.69 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 152A originally adopted October 7, 2002 and all subsequent amendments, and shall be effective on and after January 3, 2022~~July 19, 2021~~.

APPENDIX A

Application for a Variance from the Haywood County Code of Ordinances, Chapter 152A: Subdivision and Pre-Development

Date \_\_\_\_\_ Application No. \_\_\_\_\_

Applicant's Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PIN: \_\_\_\_\_

Directions to the property from Waynesville: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applications shall contain the following:

1. A complete and detailed description of the proposed variance, (see the rest of this form), together with any other pertinent information which the applicant feels would be helpful to the Haywood County Planning Board in considering the application.

TO THE HAYWOOD COUNTY PLANNING BOARD:

I, \_\_\_\_\_ (Owner/Agent), hereby petition the Haywood County Planning Board for a variance from the literal provisions of Chapter 152A: (Subdivision and Pre-Development) Haywood County Code of Ordinances because I am prohibited from using the parcel of land described in this form in a manner demonstrated within this application. I request a variance from the following provisions of the Ordinance (cite sections):

\_\_\_\_\_  
\_\_\_\_\_

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Haywood County Planning Board shall reach three conclusions as a prerequisite to the issuance of a variance:

(a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance,

(b) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit, and

(c) that in granting the variance the public safety and welfare have been assured and substantial justice has been done.

In the space provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Planning Board that it can properly reach these three required conclusions:

(1) THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed three rules to determine whether in a particular situation “practical difficulties or unnecessary hardships” exist. State facts and arguments in support of each of the following:

(a) If he/she complies with the provisions of the ordinance, the property owner can secure no reasonable return from or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

Four horizontal lines for writing.

(b) The hardship of which the applicant complains results from unique circumstances related to the applicants land. (Note: hardships suffered by the applicant in common with his neighbors do not justify a variance. Also, unique personal family hardships are not relevant since a variance, if granted, runs with the land.)

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(c) The hardship is not the result of the applicant's own actions.

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(2) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES THE SPIRIT. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

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(3) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

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I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Transmitted by

Date: \_\_\_\_\_

\_\_\_\_\_  
Received by (Clerk to the Board)

Date: \_\_\_\_\_

**IN THE EVENT THAT ANY DISCREPANCIES EXIST BETWEEN THE CRITERIA OUTLINED ON THIS FORM AND CHAPTER 152A (SUBDIVISION AND PRE-DEVELOPMENT) OF THE HAYWOOD COUNTY CODE OF ORDINANCES, CHAPTER 152A SHALL PREVAIL.**

## CHAPTER 153: MOUNTAIN RIDGE PROTECTION

### Section

#### *General Provisions*

- 153.01 [Definitions](#)
- 153.02 [Purpose](#)
- 153.03 [Authority and enactment](#)
- 153.04 [Jurisdiction](#)

#### *Permits*

- 153.20 [Permit required](#)
- 153.21 [Application for permit](#)
- 153.22 [Application approval](#)
- 153.23 [Issuance of permit](#)

#### *Administration and Enforcement*

- 153.40 [Enforcement officer](#)
- 153.41 [Application to existing buildings](#)
- 153.42 [Conflict with other laws](#)
  
- 153.98 [Violations](#)

### **GENERAL PROVISIONS**

#### **§ 153.01 DEFINITIONS.**

Except as specifically defined herein, all words used in this chapter shall have their customary dictionary definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the singular include the plural, and words used in the plural include the singular. Where this chapter references a locally adopted subdivision ordinance or zoning ordinance, all applicable definitions in the ordinances shall apply to this chapter.

## Haywood County – Land Usage

**BUILDING.** Any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind which has enclosing walls for 50% of its perimeter. The word **BUILDING** shall be construed as if followed by the words "or part thereof." Includes the word **STRUCTURE**.

**CHAPTER.** The Mountain Ridge Protection Ordinance.

**CONSTRUCTION.** Any new construction, reconstruction, alteration, or expansion.

**COUNTY.** Haywood County.

**COUNTY COMMISSIONERS.** The County Commissioners of Haywood County.

**CREST.** The uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

**ENFORCEMENT OFFICER/AGENCY.** The employees of the County Inspection Department. **ENFORCEMENT OFFICER** may mean the Building Inspector, Zoning Enforcement Officer, Planning Board, or any other person or agency designated by the local governing board.

**MAY.** Is permissive.

**PERSON.** Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the state and its agencies and political subdivisions, or other legal entity.

**PLANNING BOARD.** The Haywood County Planning Board.

**PROTECTED MOUNTAIN RIDGES.** All mountain ridges whose elevation is at least 3,000 feet and whose elevation is 500 or more feet above the elevation of an adjacent valley floor.

**RESIDENT.** Any person, as defined in this section, residing, doing business or maintaining an office within the county.

**RIDGE.** The elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

**SHALL.** Is mandatory.

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

**TALL BUILDINGS OR STRUCTURES.** Any building structure or unit within a multi-unit building, with a vertical height of more than 40 feet measured from the top of the foundation of the

building, structure, or unit and the uppermost point of the building, structure, or unit; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side slope of a ridge exceeds three feet, then such measurement in excess of three feet shall be included in the 40-foot limitation described herein; provided, further, that no such building, structure, or unit shall protrude at its uppermost point above the crest of the ridge by more than 35 feet. Tall buildings or structures do not include:

(1) Water, radio, telephone or television towers or any equipment for the transmission of electricity or communications or both.

(2) Structures of a relatively slender nature and minor vertical projections of a parent building, including chimneys, flag poles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills.

(3) Buildings and structures designated as National Historic Sites on the National Archives Registry.

(Ord. passed 12-5-83)

***Statutory reference:***

*Similar definitions, see G. S. § 113A-206*

**§ 153.02 PURPOSE.**

The Board of Commissioners finds that the construction of tall buildings or structures on mountain ridges may cause unusual problems and hazards to the residents of, and visitors to, the mountains. The purpose of this chapter therefore is to regulate the construction of tall buildings or structures on mountain ridges to insure that: adequate water supply is available to the building or structure; the disposing of sewage will not infringe on the ground water rights and endanger the health of those persons living at lower elevations; adequate fire protection can be made available; such buildings or structures will not be a hazard to air navigation and to persons on the ground; and such tall buildings will not detract from the natural beauty of the mountains.

(Ord. passed 12-5-83)

**§ 153.03 AUTHORITY AND ENACTMENT.**

(A) In pursuance of the authority conferred by G.S. § 153A-448 the Board of Commissioners of the county ordains and enacts into law these articles and sections.

(B) This chapter shall take effect and be in force on January 1, 1984.  
(Ord. passed 12-5-83)

**§ 153.04 JURISDICTION.**

The provisions of this chapter shall apply to the construction of tall buildings or structures, as defined in this chapter, on protected mountain ridges, as defined in this chapter, within the county and outside the territorial jurisdiction of any municipality within the county. This chapter may also apply to any or all areas lying within the territorial jurisdiction of any municipality within the county if the municipality by resolution requests such application. Protected mountain ridges are further identified by the map entitled "Identification of Protected Mountain Ridges in the County" and is on file in the office of the enforcement officer (Building Inspector), County Planner, and with the Register of Deeds of the county.

(Ord. passed 12-5-83)

***PERMITS*****§153.20 PERMIT REQUIRED.**

No tall building or structure shall be constructed, altered, reconstructed, or expanded on any protected mountain ridge until a permit for such construction, alteration, reconstruction, or expansion has been obtained as provided in this subchapter. No permit shall be issued that would not be in compliance with the provisions of this chapter.

(Ord. passed 12-5-83) Penalty, see §10.99

**§ 153.21 APPLICATION FOR PERMIT.**

(A) All applications for permits shall be submitted to the enforcement officer and shall be accompanied by a development plan containing, where applicable, the following information:

(1) Title block containing the name of the development, name of owner, name of developer, scale, and north arrow.

(2) Existing site conditions, including contours, water courses, any unique natural or man-made features, such as vegetation and ground cover.

(3) Exact boundary lines of the property containing the proposed construction.

(4) Location and use of all existing and proposed buildings or structures.

(5) Plans of proposed water and sewer layouts (excluding individual wells and septic systems) shall show the location of lines, line sizes, approximate location of manholes, pumps, hydrants, force mains, and the connection of the proposed system with existing systems.

(6) Location of existing and proposed easements and rights-of-way.

(7) The proposed treatment of the perimeter of the development including materials and/or techniques such as screens, fences, and walls.

(8) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features.

(9) Existing and proposed road access to, and within, the development showing rights-of-way pavement widths, and road names. Notation of the proposed ownership of the street system (public or private).

(10) A front and side elevation profile drawn to scale, of all existing and proposed buildings.

(11) Landscaping and provisions showing the type of vegetation to be used to stabilize slopes and to beautify the site. The landscape plan shall indicate that natural vegetation has been preserved wherever possible during site development. Landscaping shall include types of vegetation native to the soils of the area and easily adaptable to the conditions of the site.

(B) In addition to the development plan, all applications for permits shall be accompanied by the following documentation:

(1) If a street is to be dedicated for public use, a letter of approval for the proposed street plan shall be submitted indicating that street plans have been reviewed and approved in the following manner:

(a) Street plans shall be reviewed and approved by the State Department of Transportation (or whatever public agency is to accept the dedication and assume maintenance of the streets).

(b) Street plans shall contain all data, calculations, and information as required by the State Department of Transportation (or other appropriate public agency).

(c) The developer shall meet all other requirements of G.S. §136-102.6 if the development constitutes a subdivision.

(2) If the proposed water and/or sewer system is to connect onto an existing system, a letter of approval from the owner of the existing system for such connection shall be submitted. In addition, a letter of approval from the appropriate regulatory agency shall be submitted indicating

that the proposed connection will not cause any problems related to overloads, discharges, shortages, and the like, on the existing system.

(3) If individual wells and/or septic tanks are to be utilized, a written statement from the County Health Department indicating approval of wells and/or septic tanks for use in the development shall be submitted.

(4) If an on-site package water and/or sewer treatment system is to be utilized, a letter of approval from the State Department of Human Resources and/or the State Department of Environmental, Health, and Natural Resources shall be submitted.

(5) Documentation of an approved Sedimentation and Erosion Control Plan shall be submitted where required.

(6) A letter of approval from the appropriate fire department indicating the adequacy of the development facilities for emergency medical and fire services. Such determination shall take into consideration the street access, water pressure and availability, building height, and any other relevant factors.

(7) A letter from the applicant indicating the land in the proposed development is under single ownership or management by the applicant or proper assurances (legal title or execution of a binding sales agreement) shall be provided indicating that the development can be successfully completed by the applicant.

(Ord. passed 12-5-83)

#### **§153.22 APPLICATION APPROVAL.**

(A) The enforcement officer shall review the application for compliance with the provisions of § 153.21. Any application not containing all information required in § 153.21 shall be returned to the applicant for correction and resubmission. After the enforcement officer has determined the application contains all information required in § 153.21, the enforcement officer shall have ten days to recommend to the Planning Board either approval or disapproval of the application. In making his or her recommendation, the enforcement officer may include any appropriate conditions he or she feels should be placed on the issuance of the permit.

(B) First consideration of the application shall be at the next regularly scheduled meeting of the Planning Board after receiving the recommendations of the enforcement officer. The Planning Board shall take action on the application at its first consideration or within 45 days of its first consideration. In taking action, the Planning Board shall recommend to the Board of Commissioners either approval or disapproval of the application. If the Planning Board fails to take action within the time period specified in this subsection, it shall be deemed to have recommended approval of the application. The Board of Commissioners shall approve or disapprove the application, and if approved, authorize the enforcement officer to issue a permit within 30 days after submission of the

recommendation from the Planning Board. In making its recommendation, the Planning Board may include any appropriate conditions it feels should be placed on the issuance of the permit.

(C) The Board of Commissioners shall not approve an application until it has determined that the intent of this chapter has not been violated. In making such determination, the Board of Commissioners shall not approve the issuance of a permit if the application for the permit fails to provide for:

(1) Sewering that meets the requirements of a public wastewater disposal system that it discharges into, or that is part of a separate system that meets applicable state and federal standards.

(2) A water supply system that is adequate for fire protection, drinking water, and other projected system needs; that meets the requirements of any public water supply system that it interconnects with; and that meets any applicable state standards, requirements, and approvals.

(3) Compliance with applicable state and local sedimentation control regulations and requirements.

(4) Adequate consideration to protecting the natural beauty of the mountains as determined by the Board of Commissioners.

(5) In making such determination, the Board of Commissioners may impose any additional conditions on the permit it deems necessary.

(D) In its consideration of whether or not adequate consideration has been given to protecting the natural beauty of the mountains, the following factors shall be among those considered:

(1) Does the development plan show the natural vegetation will be preserved wherever possible?

(2) Does the development plan indicate that slopes will be stabilized by use of vegetation or by other means?

(3) Does the proposed landscaping utilize types of vegetation native to and compatible with the soils of the area?

(E) If the application is approved by the Board of Commissioners, the approval shall be stated in a letter. One copy of the letter shall be sent to the applicant, one copy shall be sent to the enforcement officer, and one copy shall be retained by the Board of Commissioners. The letter shall be sent within five days of approval of the application. Upon receipt of the letter indicating approval, the enforcement officer shall issue a permit for construction. The letter shall contain a listing of all conditions imposed on the issuance of the permit.

(F) The Board of Commissioners shall, if it disapproves the application, make findings of fact to justify the disapproval. These findings of fact shall be entered in the minutes of the Board's

meeting. In addition, a letter containing the findings of fact and specifying the provisions of this chapter with which the application does not comply shall be prepared. One copy of the letter shall be sent to the applicant, one copy shall be sent to the enforcement officer, and one copy shall be retained by the Board of Commissioners. The letter shall be sent within five days of disapproval of the applications. If the application is disapproved, the applicant may make such changes as will bring the application into compliance with this chapter and resubmit same for reconsideration by the enforcement officer as provided in § 153.21.

(Ord. passed 12-5-83)

### **§ 153.23 ISSUANCE OF PERMIT.**

Upon receipt of a letter from the Board of Commissioners approving the application for a permit, the enforcement officer shall issue the permit for construction within ten days. A copy of the approved permit shall be filed with the Register of Deeds of County. The issuance of the permit shall be subject to any conditions imposed by the Board of Commissioners as authorized in subsection § 153.22(C) and as stated in the letter approving the application. All conditions specified at the issuance of the permit shall appear on the face of the permit. If no construction has begun within three months after the date of issuance of the permit, the permit shall expire. Construction shall be deemed to have begun when any grading or excavation has commenced. If a permit expires, it shall not be reissued except under the provisions outlined in this chapter for all permits.

(Ord. passed 12-5-83)

## ***ADMINISTRATION AND ENFORCEMENT***

### **§ 153.40 ENFORCEMENT OFFICER.**

The Board of Commissioners shall appoint an enforcement officer. It shall be the duty of the enforcement officer to administer and enforce the provisions of this chapter.

(Ord. passed 12-5-83)

### **§153.41 APPLICATION TO EXISTING BUILDINGS.**

The provisions of this chapter shall apply to buildings that existed upon the effective date of this chapter as follows:

(A) No reconstruction, alteration, or expansion may aggravate or intensify a violation by an existing building or structure that did not comply with this chapter upon its effective date.

(B) No reconstruction, alteration, or expansion may cause or create a violation by an existing building or structure that did comply with this chapter upon its effective date.

(Ord. passed 12-5-83)

**§ 153.42 CONFLICT WITH OTHER LAWS.**

In interpreting and applying the provisions of this chapter, the provisions shall be held to be the minimum requirements for promoting the intent of this chapter. This chapter is not intended to interfere with or abrogate or annul other rules, regulations, or ordinances of the county. However, if the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances of the county, the more restrictive or that imposing the higher standards shall govern.

(Ord. passed 12-5-83)

**§ 153.98 VIOLATIONS.**

(A) Whenever, by the provisions of this chapter, the performance of any act is prohibited, or whenever any regulation, dimension, or limitation is imposed on the construction, reconstruction, alteration, or expansion of any building or structure, a failure to comply with the provisions of this chapter shall constitute a separate violation and a separate offense.

(B) In addition, any person injured by a violation of this chapter or any person who resides in the county in which a violation occurred may bring a civil action against the person alleged to be in violation in accordance with § G.S. 113A-211(b).

(C) If a building or structure is constructed, reconstructed, altered, or expanded in violation of this chapter, the enforcement officer, in addition to other remedies, may institute any appropriate action or proceedings pursuant to G.S. §153A-123 and G.S. § 113A-211 to prevent the unlawful construction, reconstruction, alteration, or expansion, to restrain, correct, or abate the violation, or to prevent occupancy of the building.

(Ord. passed 12-5-83; Am. Ord. passed 1-3-22) Penalty, see Sec. §10.99

**§ 153.99 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 153 originally adopted December 5, 1983, and all subsequent amendments, and shall be effective on and after January 3, 2022.

## **CHAPTER 154: EROSION AND SEDIMENT CONTROL**

### Section

#### ***General Provisions***

- 154.01 Definitions
- 154.02 Authority
- 154.03 Governing body
- 154.04 Purpose
- 154.05 Scope and exclusions

#### ***Requirements***

- 154.20 General requirements
- 154.21 Storm water drainage protection
- 154.22 Basic control objectives
- 154.23 Design and performance standards

#### ***Plans***

- 154.40 Erosion and sediment control plans
- 154.41 Plan revision after initiation
- 154.42 Responsibility for maintenance
- 154.43 Borrow and waste areas
- 154.44 Access and haul roads
- 154.45 Operations in lakes or natural watercourses

#### ***Permits***

- 154.60 Permits to conduct land-disturbing activity

#### ***Administration and Enforcement***

- 154.70 Inspections and investigations
- 154.71 Existing uncovered areas
- 154.72 Compliance
- 154.73 Surety
- 154.74 Appeals; Haywood County Sediment Control Board
- 154.99 Penalty
- 154.100 Effective Date and Revision of Original Ordinance

(Ord. passed 8-1-88; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 7-19-21)

**GENERAL PROVISIONS****§ 154.01 DEFINITIONS.**

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

**ACCELERATED EROSION.** Any increase over the rate of natural erosion as a result of landdisturbing activities.

**ACCESS AND HAUL ROADS.** All roadways either permanent or those to be obliterated after completion of land-disturbing activities; used for private travel, construction vehicles, earth moving or heavy equipment or other machinery, and constructed and used in conjunction with landdisturbing activities which require a permit under this chapter.

**ACT.** The State Sedimentation Pollution Control Act of 1973, being G.S. §§ 113A-50 through 113A-66 and all rules and orders adopted pursuant to it.

**ADEQUATE SEDIMENTATION AND EROSION CONTROL MEASURES, STRUCTURES, OR DEVICES.** A device, structure, or measure which controls the soil material within the land area under control of the person conducting the land-disturbing activity.

**AFFILIATE.** A person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control of another person (reference 17 Code of Federal Regulations §240.12(b)-2 (1 June 1993 Edition)).

**APPROVED SEDIMENT CONTROL PLAN.** A written course of action including maps, drawings, calculations, or assumptions, found by the Inspector or other duly appointed agent to satisfy all requirements of this chapter which details the timing and proper installation of erosion control measures or devices which have a reasonable probability, if implemented, of restraining accelerated erosion and off-site sediment damage associated with a land-disturbing activity.

**APPLICANT.** Any person, whether the person financially responsible for the land-disturbing activity or his/her duly appointed agent, who submits a formal application, to the Inspector or duly appointed agent, for a permit to conduct land-disturbing activities controlled by this chapter, or who files with the Sediment Board, a motion to appeal a decision by the Inspector or his or her agent as contained in this chapter.

**BEING CONDUCTED.** A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

**BORROW.** Fill material required for on-site construction obtained from other locations.

**BUFFER ZONE.** The strip of land adjacent to a lake or natural watercourse.

**CHAPTER.** The County Erosion and Sediment Control ordinance as approved by the governing board of the county and included townships.

**COMPLETION OF CONSTRUCTION OR DEVELOPMENT.** No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

**CONTINUING VIOLATION.** Those violations of this chapter or an approved sediment control plan which are occurring after the date for compliance as set forth in a notice of violation served upon the person responsible for a land-disturbing activity covered under this chapter.

**DEPARTMENT.** The North Carolina State Department of Environment and Natural Resources.

**DETENTION STORAGE.** Any structure or device which acts to retard the volume of storm water runoff and prevent increased storm flow as a result of a land-disturbing activity.

**DEVELOPMENT.** Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

**DIRECTOR.** The Director of the Division of Land Resources of the Department of Environment and Natural Resources.

**DISCHARGE POINT.** That point at which runoff leaves a tract of land.

**DISTRICT.** The Haywood County Soil and Water Conservation District created pursuant to G.S. Chapter 139.

**DISTURBED AREAS.** Any area of land or water that is subject to a land-disturbing activity as defined in this chapter.

**ENERGY DISSIPATOR.** A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

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

**FINAL OBJECTIVE.** The type of structure or use resulting from the land-disturbing activity.

**FOREST LANDS.** All land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

**FOREST PRACTICES.** Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber.

**GROUND COVER.** Any natural vegetative growth or other materials which render the soil surface stable against accelerated erosion.

**HIGH-QUALITY WATERS.** Those classified as such in 15A NCAC 2B .0101(e)(5) - General Procedures, which is incorporated herein by reference to include further amendments incorporated herein by reference.

**HIGH-QUALITY WATER (HQW) ZONES.** Areas in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the state areas that are within one mile and drain to HQW's.

**INSPECTOR.** An individual or group of individuals designated by the Haywood County Commissioners and charged with upholding the provisions of this chapter, and having the power to enter all lands at reasonable times to insure that these provisions are being carried out.

**LAKE OR NATURAL WATERCOURSE.** Any stream, river, brook, swamp, branch, creek, run, waterway, and any reservoir, lake, or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulations of sediment.

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

**LAND-DISTURBING PERMIT (hereafter "PERMIT").** The document issued by the county which allows grading or other land-disturbing activity or operations to commence and proceed in accordance with the requirements of this chapter of the Haywood County Code of Ordinances.

**LOCAL GOVERNMENT.** Any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and/or cities, acting through a joint program pursuant to the provisions of the North Carolina Sedimentation and Erosion Control Act, being G.S. §§ 113A-50 through 113A-66.

**NATURAL EROSION.** The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

**OFF-SITE SEDIMENT DAMAGE.** The removal or transport of sediment across the boundaries of a land-disturbing activity, resulting in deposition of such materials in any lake or natural watercourse or any lands public or private not owned by the person responsible for the landdisturbing activity.

**PARENT.** An affiliate that directly, or indirectly through one or more intermediaries, controls another person (see 17 Code of Federal Regulations §240.12(b)-2 (1 June 1993 Edition))

**PERSON.** Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

***PERSON RESPONSIBLE FOR THE VIOLATION.***

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

***PERSON CONDUCTING LAND-DISTURBING ACTIVITIES.*** Any person who may be held responsible for a violation of this chapter unless expressly provided otherwise in this chapter or the Sedimentation Pollution Control Act of 1973, being G.S. §§ 113A-50 through 113A 66, as amended, or any order adopted pursuant to this chapter or the Act.

***PHASE OF GRADING.*** One of two types of grading, rough or fine.

***PLAN.*** Erosion and Sediment control plan.

***PUBLIC ROAD.*** A road or street which is maintained by the North Carolina Department of Transportation for use by the public and/or roads that are in actual open use as public vehicular areas, or dedicated or offered for dedication to the public use as a road, highway, street, or avenue, by a deed, grant, map, or plat, and that has been constructed and is in use by the public.

***SEDIMENT.*** Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

***SEDIMENT BOARD.*** The Haywood County Sediment Control Board as organized by this chapter..

***SEDIMENTATION.*** The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

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

***STORM DRAINAGE FACILITY.*** The system of inlets, conduits, channels, ditches, and appurtenances which serve to collect and convey storm water through and from a given drainage area.

**STORM WATER RUNOFF.** The direct runoff of water resulting from precipitation in any form.

**SUBSIDIARY.** An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

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

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

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

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

**UNDERTAKEN.** The initiation of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

**VELOCITY.** The average velocity of flow through the cross-section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of the flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

**VIOLATION.** Any land-disturbing activity covered under the provisions of this chapter which is planned or carried out without regard to all the contents and responsibilities thereof or an approved erosion and sediment control plan.

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

**WASTE AREAS.** Areas used for the stockpiling or burial of surplus materials resulting from on-site construction and disposed of at other locations.

**WORKING DAYS.** Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activities to be undertaken.  
(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

**§ 154.02 AUTHORITY.**

- (A) Soil erosion and sedimentation are considered major public problems; therefore the Commissioners of the county enact the following chapter under the authority of the appropriate State Law, being G.S. Chapter 113A, Article 4, as amended.
- (B) This chapter shall be cited as the Haywood County Erosion and Sediment Control ordinance.
- (C) This chapter shall be effective on August 1, 1988.  
(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

**§ 154.03 GOVERNING BODY.**

The governing body of this chapter is the Haywood County Sediment Control Board, as created in § 154.74, hereafter referred to as the Sediment Board.  
(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

**§ 154.04 PURPOSE.**

This chapter is adopted for the purposes of:

- (A) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation.
- (B) Protecting public and private lands from accelerated erosion due to increases in storm water runoff.
- (C) Preventing continued accelerated erosion of existing areas which are unprotected and not in compliance with this chapter at the time of its adoption.
- (D) Establishing procedures through which these purposes can be fulfilled.  
~~(D)~~ (-Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

**§ 154.05 SCOPE AND EXCLUSIONS.***(A) Scope.*

(1) This chapter shall apply to all land-disturbing activities as defined in G.S. § 113A52(6) undertaken by any person, with the exclusion of those defined in divisions (B)(1) through (3) of this section.

(2) In addition, a permit, contingent upon an approved plan, shall be required for all landdisturbing activities comprising one-half (21,780 square feet) or greater acres, including both temporary or permanent access and haul roads, borrow pits, waste areas, or other associated activities, undertaken by any person within the limits of the county. Also, a permit contingent upon an approved plan shall be required for all land-disturbing activities comprising less than one-half acres (<21,780 square feet) including both temporary and permanent access and haul roads, borrow pits, waste areas, or other associated activities, undertaken by any person within the limits of the county for any house site subject to a permit from the Haywood County Buildings Inspections Office (construction or placement) which are less than one-half acre in disturbed area; and commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than onehalf acre in disturbed area.

*(B) Excluded land-disturbing activities.*

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

- (a) Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
- (b) Dairy animals and dairy products.
- (c) Poultry and poultry products.
- (d) Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
- (e) Bees and apiary products.
- (f) Fur producing animals.

(2) Land disturbing activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department, but not including development activities such as clearing land or cutting timber.

(3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

(4) Land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. § 113A-56(a), as amended from time to time.

(5) For the duration of an emergency, activities essential to protect human life. ((1993 (Reg. Sess., 1994), c. 776, s 2: 1997, c. 84, s.1.))

(C) *Jurisdiction.* This chapter may apply within the incorporated areas of municipalities upon proper resolution by the governing bodies of the respective municipalities and agreement by the Haywood County Board of Commissioners.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

## ***REQUIREMENTS***

### **§ 154.20 GENERAL REQUIREMENTS.**

(A) *Persons conducting land-disturbing activities.*

(1) Persons conducting land-disturbing activities shall take all reasonable measures to prevent damage to public and private property resulting from those activities. In addition, they will be held responsible for knowing and following the requirements of this chapter.

(2) It is the responsibility of the person conducting the land-disturbing activity to apply to the Inspector or his or her agent for any permit required and receive the permit contingent upon an approved sediment control plan, before beginning any land-disturbing activity which uncovers one-half or greater acres; and any house site subject to a permit from the Haywood County Building Inspections Office (construction or placement) which is less than one-half acre in disturbed area; or commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area.

(3) Permit.

(a) If any land-disturbing activity requires a permit as defined in this chapter, none of the following documents or permits, where applicable, shall be issued until an erosion control plan has been approved by the Inspector:

1. A septic tank permit.

2. A building permit.

(b) Any of the above permits may be applied for at the same time as the permit required by this chapter.

- (4) Requests for a permit to conduct land-disturbing activities shall contain an erosion and sediment control plan.
- (5) Applications shall be submitted at least 30 calendar days prior to the planned initiation of the land-disturbing activity.
- (6) No person shall initiate any land-disturbing activity which uncovers one-half or greater acres without having an erosion and sediment control plan approved by the Inspector.
- (7) Whenever conflicts exist between federal, state, or local laws, ordinances, or rules, the more restrictive provision shall apply.

(B) **MANDATORY STANDARDS.** No land-disturbing activity subject to this chapter shall be undertaken except in accordance with the following mandatory requirements:

(1) *Buffer zone.*

(a) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Director may approve plans which include land-disturbing activity along trout waters when the duration of the disturbance would be temporary and the extent of the disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(b) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area with the 25% of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(c) The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.

(d) Where a temporary and minimal disturbance is permitted as an exception by G.S. §113A-57(1) land-disturbing activities in the buffer zone adjacent to designated

trout waters shall be limited to a maximum of 10% of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.

(e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15A Adm. Code 2B.011 "Fresh Surface Water Classification and Standards", as amended.

(2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with a ground cover, device, or structure sufficient to restrain erosion.

(3) *Ground cover.* Whenever land-disturbing activity is undertaken on a tract subject to permitting requirements of this chapter, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in § 154.23(B)(5) of this chapter, provision for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of construction or development, whichever is shorter.

(4) *Prior plan approval.* No person shall initiate any land-disturbing activity if one-half (1/2) acre or more is uncovered unless a sediment control plan is filed 30 or more days prior to initiation of the activity and the plan is approved by the Inspector.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 7-19-21) Penalty, see § 154.99

(5) Any land-disturbing activity for which a plan is required by this chapter shall be conducted in accordance with the approved erosion and sedimentation control plan.

**§ 154.21 STORM WATER DRAINAGE PROTECTION.**

- (A) *Statement of purpose.* The purpose of this section is to protect the public health, safety, and welfare from property damage caused by storm water runoff. To accomplish this, projects that fall under the provisions of this chapter shall take into consideration the following two basic objectives:
- (1) Protect the absorptive, purifying, and retentive functions of natural systems that exist on the site of a proposed development; and
  - (2) Provide for post development storm water runoff characteristics that resemble the conditions that existed before the site's alteration.
- (B) *Regulations.*
- (1) *Post-construction velocity.*
    - (a) Persons shall conduct land-disturbing activity so that the post-construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
      1. The velocity established by the table in division (B)(5) below; or
      2. The velocity of the 10-year storm runoff in the receiving watercourse prior to development.
    - (b) If conditions (B)(1)(a) 1. or 2. cannot be met, then the receiving watercourse to, and including, the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%. (2) *Performance standard.*
      - (a) The disturbing activity shall be planned and conditions such that the velocity of storm water runoff in the receiving watercourse at the point of discharge resulting from 10-year storm after development shall not exceed the greater of:
        1. The critical velocity acceptable in the receiving watercourses as determined from division (B)(5) of this rule; or
        2. The velocity in the receiving watercourse determined for the 10-year storm prior to development.
      - (b) If conditions (B)(2)(a) 1. or 2. of this section cannot be met, the channel below the discharge point shall be designed and constructed to withstand the expected velocity.
  - (3) *Acceptable management measures.* Measures applied alone, or in combination, to satisfy the intent of this section are acceptable if there are no objectionable secondary

consequences. Innovative techniques and ideas will be considered and may be used when shown to have the potential for successful results. Some alternatives are to:

- (a) Avoid increases in surface water runoff volume and velocity by including measures which promote filtration or detention and to compensate for increased runoff from areas rendered impervious.
  - (b) Avoid increases in storm water discharge velocities by using vegetated or roughened swales or waterways or detention storage in lieu of closed drains and high-velocity paved sections.
  - (c) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures.
  - (d) Protect watercourses subject to accelerated erosion by providing improved crosssections or linings resistant to erosion such as rip-rap or gabions.
- (4) *Exception.* This rule shall not apply where it can be shown that storm water discharge velocities will not create an accelerated erosion problem in the receiving watercourse.
- (5) *Maximum permissible velocity.* The following is a table for maximum permissible velocities for storm water discharges:

<i>Material</i>	<i>Maximum Permissible</i>	<i>Velocities</i>
	<i>F.P.S.</i>	<i>M.P.S.</i>
Fine sand	2.5	.8
Sandy loam	2.5	.8
Silt loam	3	.8
Firm loam	3.5	.9
Fine gravel	5	1.1
Still clay	5	1.5
Graded loam to cobble	5	1.5
Graded silt to cobble	5.5	1.5
Alluvial silts (non-colloidal)	3.5	1.1
Alluvial silts (colloidal)	5	1.5
Coarse gravel	6	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6	1.8

Source – adapted from recommendations by Special Committee on Irrigation Research, ASCE, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by .95 for slightly sinuous, by .9 for moderately sinuous channels, and by .8 for highly sinuous channels.

- (6) *Storm water runoff permit.* A storm water runoff permit is required where:
- (a) A sediment control plan is required, and;
  - (b) The parcel is over two acres in area, and;
  - (c) The impervious surface of the new construction, including buildings, roads, sidewalks, recreational facilities, and the like, is over 50% of the acreage. For the purposes of this section, impervious surfaces include gravel, asphalt, concrete, tennis courts, and the like. (Note: Wooden slated decks and the water area of a swimming pool are considered pervious.)
- (7) *Design standards.* The first one inch of rainfall shall be required to percolate on the site. This shall be accomplished through best management practices such as buffer areas, grassed swales, filter strips, porous pavement, infiltration basins and trenches, water quality inlets, retention ponds, extended detention ponds and other measures.
- (8) *Storm water drainage plan.* A storm water drainage plan is required for all developments meeting the requirements of division (B)(6) above. It shall be prepared by a registered engineer, landscape architect or, to the extent permitted by law, a registered land surveyor and shall contain the following general elements:
- (a) A general site plan showing all impervious surfaces, the location and size of all storm water drainage structures (if any), best management practice measures, and infiltration areas;
  - (b) Topographic features (finished grade);
  - (c) General or typical cross sectional drawings of all storm water drainage structures, if any;
  - (d) The total number of square feet of impervious surfaces and its relative percentage of the total lot;
  - (e) Any other information deemed necessary by the Erosion Control Specialist.
- (9) *Operation and maintenance.* It shall be the responsibility of the property owner to insure that whatever storm water management devices or measures are installed are kept in good working order.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Ord. passed 7-23-07) Penalty, see § 154.99

**§154.22 BASIC CONTROL OBJECTIVES.**

An erosion and sediment control plan may be disapproved pursuant to § 154.40 of this chapter if the plan fails to address the following control objectives:

(A) *Control off-site sediment damage.* All land-disturbing activities are to be planned and conducted to confine sediment produced within the boundaries of the property upon which landdisturbing activities are being carried out.

(B) *Limit the time of exposure.* All land-disturbing activities are to be planned and conducted to limit exposure of disturbed areas to the shortest possible time. When discrete segments of the land-disturbing activity are completed, these should be stabilized quickly to avoid additional accelerated erosion hazards.

(C) *Limit the exposed areas.* All land-disturbing activities are to be planned and conducted to limit the size of the areas to be exposed at any one time.

(D) *Control surface water.* Surface water runoff originating from or upgrade of disturbed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(E) *Identify critical areas.* On-site areas subject to severe erosion and off-site areas subject to damage from accelerated erosion and/or sedimentation are to be identified and receive special attention.

(F) *Manage storm water runoff.* When the increase in the velocity of storm water runoff resulting from land-disturbing activities is sufficient to cause accelerated erosion in the receiving watercourse, plans are to include measures to control the velocity at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

**§ 154.23 DESIGN AND PERFORMANCE STANDARDS.**

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

(B) In High Quality Water (HQW) zones the following design standards shall apply:

(1) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity

within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

(2) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed, and constructed to provide protection from the runoff of the 25year storm which produces the maximum peak rate of runoff as calculated according to procedures in the US Department of Agriculture Soil Conservation Service's "National Engineering Field Manual from Conservation Practices" or according to procedures adopted by any other agency of this state or the federal government or any generally recognized organization or association.

(3) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.4 mm) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the US Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the federal government or any generally recognized organization or association.

(4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes not steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices, or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(5) Ground cover sufficient to restrain erosion must be provided for any portion of a landdisturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

### *PLANS*

#### **§ 154.40 EROSION AND SEDIMENT CONTROL PLANS.**

(A) A sediment control plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract comprising one-half or greater acres, if one-half or greater acres is to be uncovered. A sediment control plan shall be prepared for all land-disturbing activities for any house site subject to a permit from the Haywood County Building Inspections Office (construction or placement) which is less than one-half acre in disturbed area; and commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area.

- (B) Persons conducting land-disturbing activities on a tract which cover one-half or greater acres, shall file two copies of the erosion and sediment control plan with the Inspector at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. The Inspector will forward one copy of the plan to the District office upon receipt of a filed plan. If the Inspector, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Inspector will require a revised plan. Pending the preparation of a revised plan, permits to conduct land-disturbing activities may be rescinded and work stopped or allowed to continue under conditions outlined by the Sediment Board.
- (C) Erosion and sediment control plans shall be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her attorney in fact. The statement shall include the mailing and street address of the principal place of business of the person financially responsible and of the owner of the land or the owner's registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, this chapter or rules or orders adopted or issued pursuant to this chapter. If the applicant is not the owner of the land to be disturbed, the draft erosion and sediment control plan must include the owner's written consent for the applicant to submit a draft erosion and sediment control plan and to conduct the anticipated land-disturbing activity.
- (D) Where prior approval of an erosion and sediment control plan is required, the applicant shall submit a copy to the Haywood County Soil and Water Conservation District. The District, within 20 days of receipt of any plan, shall review the plan and submit its comments and recommendations to the Sediment Board or the Inspector. Failure of the District to submit its comments and recommendations within the 20 days will not delay final action on the plan. The parties may agree to a period of time less than 20 days.
- (E) The Inspector will review each complete plan submitted and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve or disapprove a complete sediment control plan or a revised sediment control plan within 30 days of receipt shall be deemed approval. Denial of a plan must specifically state in writing the reasons for denial. The Inspector must approve, approve with modification, or deny a revised plan within 15 days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the Inspector determined that the plan is inadequate to meet the requirements of this chapter, the Inspector may require such revisions as are necessary to comply with this chapter. Failure to approve, approve with modification or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.
- (F) Any plan submitted for a land-disturbing activity for which an environmental document is required by the State Environmental Policy Act (G.S. § 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for review. The Inspector shall promptly notify the person submitting the plan that the 30-day time limit for review for the plan

pursuant to § 154.60(C)(5) of this chapter shall not begin until a complete environmental document is available for review.

- (G) The sediment control plan required by this section shall contain such architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plans submitted to the Inspector shall contain such forms or worksheets as supplied and approved by the Inspector or at minimum:
- (1) A description of the final objective of the land-disturbing activity.
  - (2) A specific time schedule for various stages of the land-disturbing activities.
  - (3) Maps showing the following features should also be supplied:
    - (a) A true scale of not greater than one inch equals 200 feet and a contour interval of five feet or such interval sufficient to describe the topography. Not-to-scale sketches are not acceptable.
    - (b) Exact boundaries of the site including interior lines or easements, relations to nearest streets, roads, or highways, scale and north arrow, total acreage, and boundaries of the areas to be disturbed, as well as accurate estimates of their size, shall be shown.
    - (c) Existing conditions including buildings, creeks, or other bodies of water, culverts and bridges, road grades, areas of special environmental concern or those subject to severe erosion or flooding hazard, or other information which may be pertinent in evaluation of the plan.
    - (d) The location of access and haul roads, borrow pits, proposed structures, areas of cuts and fill, culverts, ditches, stream relocations, sediment basins, and other structural erosion control measures, and any non-vegetative ground covers such as paving, rip-rap, or other surfaces.
  - (4) Supporting documentation used for design of erosion control measures. including but not limited to:
    - (a) Runoff and drainage calculations, soil test results, velocity and discharge computations.
    - (b) Specifications for establishment and maintenance of vegetative ground covers including species to be used, lime and fertilizer application rates, time and method of planting, and type of mulch.

- (H) A sediment control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:
  - (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by Haywood County pursuant to the Sedimentation Pollution Control Act and has not complied with the notice within the time specified in the notice;
  - (2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time payment is due;
  - (3) Has been convicted of a misdemeanor pursuant to G.S. § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act or;
  - (4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.
  - (5) For purposes of § 154.40(H), an applicant's record may be considered for only the two years prior to the application date.
  - (6) Has submitted an erosion control or sediment control plan if implementation of the plan would result in a violation of rules adopted by the environmental management commission to protect riparian buffers along surface waters.
- (I) The Inspector may require additional information from the applicant, at his or her discretion, to aid in determining the suitability of a submitted erosion and sediment control plan.
- (J) Any person engaged in land-disturbing activity who fails to file a plan in accordance with this chapter, or conducts a land-disturbing activity except in accordance with provisions of an approved erosion and sediment control plan shall be deemed in violation of this chapter.
- (K) Amendment to a plan.
  - (a) Application for an amendment to a plan may be made at any time in written or graphic form under the same conditions as the original application. Until the proposed amendment is approved by the Inspector, subject to all criteria set forth in this chapter, the permit holder may not proceed except in accordance with the original plan as approved.
  - (b) When an amendment is approved, the Inspector shall issue a new permit for the remaining time on the old permit plus the additional time as requested on the amendment.
- (L) Reference to sediment control plan shall be deemed to be intended to be identical to and the same as references to erosion and sediment control plan, when appearing in this ordinance or in the General Statutes of North Carolina.

(M) Haywood County and/or the Commission shall condition approval of a draft erosion and sediment control plan upon the applicant's compliance with federal and state water quality laws, regulations and rules.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

(N) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1. Any deviation from the approved erosion and sediment control plan that more than a minor field adjustment must be approved by the inspector prior to construction.

#### **§ 154.41 PLAN REVISION AFTER INITIATION.**

(A) Whenever the Inspector determines that significant sedimentation is occurring as a result of land-disturbing activities, despite application and maintenance of protective measures, the person conducting the land-disturbing activities will be required to and shall take additional protective action.

(B) If deemed appropriate by the Inspector the person conducting the land-disturbing activities shall submit an amendment or revision within the time specified by the Inspector. If an amendment or revised plan is neither approved or disapproved within 15 days after receipt by the Inspector, it is deemed approved.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

#### **§ 154.42 RESPONSIBILITY FOR MAINTENANCE.**

(A) *Maintenance during development.* The person conducting land-disturbing activities shall be responsible for maintaining and installing all temporary and permanent erosion control measures and vegetative covers as required by an approved sediment control plan or other provision of this chapter, the Act, or orders adopted pursuant to this chapter or the Act, during development of the site. After development is completed, the responsibility for installation and maintenance of all permanent erosion and sediment control measures, structures, or devices shall lie with the owner or person in possession or control of the property.

(B) *Maintenance after project completion.*

(1) Failure to properly maintain permanent erosion control measures after completion of the project constitutes a violation of this chapter unless located within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(2) If maintenance of existing structures, measures, or devices are deemed inadequate by the Inspector, written notice of violation shall be served upon the landowner detailing the specific items of violation and setting a reasonable time frame for corrective action. Notices of violation shall be sent by registered or certified mail or other means. It shall further warn that failure to correct the violation in the time period specified will result in the assessment of a civil penalty or other enforcement action.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

**§ 154.43 BORROW AND WASTE AREAS.**

When the person conducting the land-disturbing activities is also the person conducting the borrow and waste disposal activities, areas from which borrow is obtained and which are not regulated by the Mining Act of 1971, being G.S. §§ 74-46 through 74-68, and waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the landdisturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

**§ 154.44 ACCESS AND HAUL ROADS.**

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity. (Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

**§ 154.45 OPERATIONS IN LAKES OR NATURAL WATERCOURSES.**

Land-disturbing activities in connection with construction on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in a streamflow's characteristics except when justification for a significant alteration to flow characteristic is provided.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

***PERMITS*****§ 154.60 PERMITS TO CONDUCT LAND-DISTURBING ACTIVITY.**

- (A) No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a permit from the Inspector except that no permit shall be required for any land-disturbing activity:
- (1) For the purpose of fighting fires.
  - (2) That does not exceed 21,780 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
  - (3) For the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage.
- (B) The plan review fee charge is \$350 for each acre or parts of acres of land to be disturbed. An additional 10% of the total fee will be charged for any land-disturbing activity in areas of the county that may impact classified trout waters. Plan review fees shall be double the normal fee amount when land-disturbing activity begins before a Land-Disturbing Permit is obtained from the County. For a third or more plan review(s) as part of a submission, an additional fee of \$100 per acre or parts of an acre shall be charged. The plan review charge is \$50 per plan submission for any house site subject to a permit from the Haywood County Building Inspections Office (construction or placement) that is less than one-half acre in disturbed area. The plan review charge is \$50 per plan submission for commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area.
- (1) To obtain a land-disturbing permit, the following is required for disturbed sites of one-half or more acres (21,780 square feet or more):
    - (a) the completed form of financial responsibility and ownership,
    - (b) the completed and signed erosion and sediment control plan design checklist,
    - (c) the correct plan review fee,
    - (d) an approved erosion and sediment control plan (two copies),
    - (e) the completed affidavit for land-disturbing activities.
  - (2) If the intent is to disturb one-half acre or more on a tract of land regardless of time frame, a land-disturbing permit must be obtained prior to beginning the land-disturbing activity.

(C) *Applications for permits.*

- (1) Clear lines of communication between the Inspector and the person conducting the land-disturbing activities are essential not only for the success of the program outlined in this chapter, but to avoid costly delays and resubmittal of applications by the developer as well. This section outlines procedures which will insure speedy processing of applications for permits to conduct land-disturbing activities.
- (2) The person conducting the land-disturbing activity shall submit the application to the Inspector for review and approval at least 30 days prior to initiating any land-disturbing activity covered by this chapter. Only applications received through registered or certified mail, or hand delivered, will be accepted. In addition, all applications must contain an erosion and sediment control plan which meets all requirements set forth in § 154.40 of this chapter.
- (3) Prior to submitting a formal application for a permit, persons conducting landdisturbing activities may notify the Inspector, briefly describing the planned activity, persons responsible for design of sediment control measures, a tentative schedule of activities, and a request for application forms. A pre-application conference is strongly suggested to identify specific areas of concern to both the applicant and the Inspector. A permit will not be issued based upon a notification of intent.
- (4) Forms, application requirements, and plan assistance are available upon request from the Inspector's office. All requests for pre-development planning, submission of plans and applications, and requests for assistance will be handled through the office of the Inspector.
- (5) The Inspector shall review the application and accompanying plan for completeness and compliance with this chapter.
  - (a) Applications found to meet all requirements of this chapter shall be approved, and a permit to conduct land-disturbing activities will be issued by the Inspector within 30 days after receipt of the application.
  - (b) After review, applications which do not meet all requirements of this chapter shall be approved with modifications, approved with performance reservations, or disapproved. The application shall be returned to the applicant in writing detailing specific areas where the standards of this chapter have not been met. The applicant shall be notified within 30 days after receipt by the Inspector that the plan has been disapproved. If the application is disapproved, the applicant may resubmit the application after performing the necessary changes, for additional review. If the application is disapproved, no permit to conduct land-disturbing activities will be issued.

**Haywood County – Land Usage**

- (c) For applications found to be partially complete, the Inspector shall request specific additional information by registered mail. If sufficient information is provided and the plan meets all requirements of this chapter, a permit to conduct land-disturbing activities shall be issued. When deemed necessary by the inspector, a permit may be issued with performance reservations or approved contingent upon modifications to the plan. Under no circumstances shall the 30-day time period for approval or disapproval be extended by a request for additional information.
  - (d) Failure to approve or disapprove a properly submitted application for a permit to conduct land-disturbing activities within 30 days of receipt by the Inspector shall be deemed approval. A submitted revision to a previously disapproved application must be approved or disapproved within 15 days of receipt by the Inspector, or it is deemed approved.
  - (e) If, following commencement of a land-disturbing activity pursuant to an approved plan, the Inspector determines that the plan is inadequate to meet the requirements of this chapter, he or she may require such revisions as are necessary to comply with this chapter.
- (6) If the submitted plan is approved by the Inspector, a permit to conduct land-disturbing activities shall be issued in the name of the applicant.
- (a) Permits shall be issued for the specific time frame requested or for incremental time periods if requested on the application. The permit shall lapse at the end of the time frame specified. It may be reissued by the Inspector at the written request of the permit holder, when deemed necessary. Written request for an extension of a permit to conduct land-disturbing activities must be made in writing at least ten days prior to expiration of the existing permit.
  - (b) Permits shall be prominently displayed on the site until the project is certified complete by the Inspector or the release of all applicable surety. In addition, a copy of the approved sediment control plan shall be kept on hand at the job site at all times for inspection.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

*ADMINISTRATION AND ENFORCEMENT***§ 154.70 INSPECTIONS AND INVESTIGATIONS.**

(A) The Inspector will periodically inspect the sites of land-disturbing activities to determine whether the activity is being conducted in accordance with the plan, the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter and to determine whether the measures required by the plan are effective in controlling erosion and sediment resulting from land-disturbing activities. For this purpose, he or she may enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion and sediment control plan.

(B) The Inspector shall conduct on-site inspections of the work authorized by the permit to insure that the work is done in accordance with the approved erosion and sediment control plan and meets all requirements of this chapter. If violation of the approved plan or other requirements of this chapter is found, the Inspector will serve upon the person responsible, by registered or certified mail or other means (including posting a notice on the site), reasonably calculated to give actual notice, a notice of violation of this chapter and shall revoke the issued permit to conduct land-disturbing activities. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4. The specific violations, measures necessary to achieve compliance, and the time frame for correction of those items shall be set forth in the notice of violation. However, no time period for compliance need be given for obstructing, hampering, or interfering with an authorized representative while in the process of carrying out his or her official duties. If the items are not corrected in the specified time frame, enforcement action shall be initiated or a civil ~~and criminal~~ penalty imposed as provided in G.S. § 113A-64, effective from the date of receipt of the notice of violation.

(C) The Sediment Board shall have the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. No person shall refuse entry or access to any authorized representative or agent of the Inspector or the Sediment Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representatives while in the process of carrying out their official duties.

(D) The Inspector shall also have the power to require written statements or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activities.

(E) The Inspector, as employed and approved by the County Commissioners, shall be responsible to and act under the authority of the County Commissioners in consultation with the Sediment Board. The Inspector shall be responsible for all inspections, plan review and approval, initiation of penalties, and other responsibilities as outlined in this chapter.

(Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

**§ 154.71 EXISTING UNCOVERED AREAS.**

(A) All uncovered areas existing on the effective date of this chapter resulting from land disturbing activities covered under this chapter which contain one or greater acre in size, and are causing off-site sediment damage, and are subject to continued accelerated erosion shall be required to provide a ground cover or other adequate erosion control and sedimentation devices, measures, or structures sufficient to restrain accelerated erosion and control off-site sediment damage.

(B) If the person in possession or control of the property or the owner fails to comply with the provisions of this chapter:

(1) The Inspector will serve upon the landowner or other person in possession or control of the land written notice of violation by registered or certified mail return receipt requested, or other means reasonably calculated to give actual notice which shall include the specific items of violation and set a reasonable time frame for compliance. In determining the measures required and the time allowed for compliance, the economic feasibility, technology, and quantity of work required shall be considered.

(2) The Inspector reserves the right to require the preparation and approval of a sediment control plan in any instance where extensive control measures are required. (Ord. passed 8-1-88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

**§ 154.72 COMPLIANCE.**

(A) Injunctive relief.

(1) Whenever the Inspector has reasonable cause to believe that any person is violating or threatening to violate any provision of this chapter, or any term or condition of an approved sediment control plan, he or she may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the county for injunctive relief to restrain the violation or threatened violation. The action will be brought in the Superior Court of Haywood County by the County Attorney.

(2) Upon determination by the court that an alleged violation is occurring or is threatened, it will enter such orders or judgments as necessary to halt the violation or prevent the threatened violation. The institution of an action for injunctive relief will not relieve any party to such proceedings from any civil ~~or criminal~~ penalties prescribed for violations of this chapter.

(B) If after the time specified in the notice of violation the site is not in compliance with an approved erosion and sediment control plan or all requirements of this chapter, the Inspector shall present written demand for payment upon the person in violation. The demand for payment shall detail the specific areas where the responsible person is in violation of this chapter.

- (C) Civil penalties collected pursuant to this chapter shall be used or disbursed as directed by G.S. § 113A-64(a), and if not otherwise provided, such penalties shall be used in the administration of this chapter by the county.
- (D) The period of time set in the notice of violation, as issued by the Inspector, for the site to come into compliance with this chapter is not exempt from accrual of civil penalties toward the person responsible for the land-disturbing activity.
- (Ord. passed 8-1-88; Am. Ord. passed 6-1-90; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

### § 154.73 SURETY.

- (A) Application for a permit to disturb five or more acres shall require the posting of a security bond, with the Inspector, in the form of an escrow account, an account guaranteed by an established surety company or other instruments satisfactory to the County Attorney, in an amount of \$2500 per acre or parts of acres of disturbed area as set forth in the approved erosion and sediment control plan, to cover the costs of installation of sufficient erosion and sediment control measures and devices on the site in accordance with this chapter. Such surety shall be valid until the land-disturbing activity is completed in accordance with the approved sediment control plan and released by the Inspector as discussed in the following subsections.
- (B) Land-disturbing activities not in compliance with this chapter or an approved sediment control plan for 31 calendar days after notice of violation is received through registered mail or certified mail or other means detailing specific items of violation, shall be subject to forfeiture of all applicable surety.
- (C) Forfeiture of applicable surety shall in no way relieve responsible parties of penalties, fines, or other requirements of this chapter.
- (D) Forfeited surety shall be used to establish erosion control structures or ground covers in accordance with an approved sediment control plan. Any monies in excess of cost of establishing protective measures shall be refunded to the person responsible for the land-disturbing activity.
- (E) Upon completion of improvements as required by this chapter, written notice shall be given by the applicant, through registered or certified mail, to the county which shall perform an inspection of the improvements. If the conditions of this chapter are met, the county shall, within 30 calendar days of the date of notification of completion, authorize in writing the release of applicable surety. (Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

**§ 154.74 APPEALS; HAYWOOD COUNTY SEDIMENT CONTROL BOARD.**

(A) *Creation.* In order to provide a procedure for appeals, as outlined in division (C) of this section, the Haywood County Sediment Control Board (hereafter “Sediment Board”) is created. The Sediment Board shall be a five-member board composed of the following appointees:

- (1) Two supervisors from the District Board, nominated by that board. An additional District Supervisor shall serve as an alternate.
- (2) The Chairman of the Board of County Commissioners or his or her appointee.
- (3) One appointee of the County Commissioners from each of the following groups or organizations:
  - (a) Haywood County Home Builders Association, or a private organization with similar functions.
  - (b) A licensed general contractor.
- (4) All members shall be appointed to staggered four-year terms with all elected officials serving only during the duration of their office.
- (5) Individuals nominated for the Sediment Board shall be approved by the Haywood County Board of Commissioners, who shall make the final appointments.
- (6) In the event that qualified individuals from the designated organizations or groups are unavailable, the County Commissioners shall appoint members at large.
- (7) Prior to undertaking their duties on the Sediment Board, members shall qualify by taking an oath of office pursuant to N.C.G.S. Chapter 160D-309.

(B) *Responsibilities.* In addition, consistent with this chapter, the Sediment Board shall be responsible for providing direction and policy for the sediment control program in general. In addition, the Sediment Board shall make decisions in matters concerning forfeiture of surety, civil and criminal penalties, or injunctions against individuals in violation of this chapter, after consultation with the County Attorney.

Members of the Sediment Board shall not vote on any decision 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 Board member shall not vote on any matter if the property owner or financially responsible party is a person with whom the Board member has a close familial, business or other associational relationship.

(C) *Opportunities for appeal.*

- (1) Except as provided in division (C)(2) of this section, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:
    - (a) The disapproval or modification of an application for a permit to conduct land disturbing activities by the Inspector will entitle the applicant to appeal to the Sediment Board, which shall consider the matter in accordance with N.C.G.S. Chapter 160D-405.
    - (b) The determination of forfeiture of applicable surety shall be subject to appeal to the Sediment Board, which shall consider the matter in accordance with N.C. G.S. Chapter 160D-405.
    - (c) A notice of violation for failure to maintain existing sediment-control structures or ground covers after completion of the project or a notice of violation for existing uncovered areas subject to continued erosion at the time of passage of this chapter shall be subject to appeal before the Sediment Board, which shall consider the matter in accordance with N.C. G.S. Chapter 160D-405.
  - (2) The Inspector shall advise the applicant and the Sediment Board in writing as to the specific reason(s) that the plan was disapproved. The applicant may appeal the Inspector's disapproval of the plan pursuant to § 154.40(H) directly to the Sediment Board, which shall consider the matter in accordance with N.C. G.S. Chapter 160D-405.
- (D) Appeal hearings will be conducted within 30 calendar days after written request for appeal is received by the Sediment Board. Only written requests for appeal received within 15 days of any action by the Inspector which qualify for appeal will be considered. If the appeals hearing is not conducted within the specified time frame, the appeal is deemed upheld.
- (E) If the Sediment Board upholds the action by the Inspector in the case of disapproval or modification of a submitted sediment control plan, the person submitting the appeal shall then be entitled to appeal the Sediment Board's decision to the Haywood County Board of Commissioners as provided by G.S. § 113A-61 (C), Title 15 Adm. Code 4 (B) .0018b. and N. C. G.S. Chapter 160D-406. Judicial review of the final action of the Haywood County Board of Commissioners shall be to the Superior Court of Haywood County, upon appeal by an aggrieved party in accordance with N.C.G.S. Chapter 160D-406(k).
- (F) Any fines levied during the appeal period shall accrue and be payable by the responsible individuals so long as the violations remain. Upon conclusion of the appeals process, either the responsible party must pay all applicable fines or if the appeal is upheld, all applicable fines shall be forfeited by the county and returned to the successful appellant.
- (Ord. passed 8-1-88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07; Am. Ord. passed 7-19-21)

**§ 154.99 PENALTY.**

Any person conducting land-disturbing activities who does not apply for a permit as specified in this chapter, or who conducts land-disturbing activities except in accordance with an approved erosion and sediment control plan shall be in violation of this chapter and subject to applicable penalties as follows:

~~(A) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this chapter, or rule or order adopted or issued pursuant to this chapter, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion and sediment control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or a fine not to exceed \$5000, or both, in the discretion of the court.~~

~~(B)~~ *Civil penalties.*

- (1) Any person who initiates or continues a land-disturbing activity without an approved erosion and sediment control plan, or violates any of the provisions of this chapter, or orders or rules adopted pursuant to this chapter, or conducts land-disturbing activities except in accordance with an approved erosion and sediment control plan, shall be subject to a civil penalty other than a violation of a stop-work order issued under G.S. § 113A-65.1 of not more than \$5,000. The maximum civil penalty for a violation is \$5,000. A civil penalty may be assessed for the date of the initial violation. Each day of a continuing violation is a separate violation and subject to an additional \$5,000 fine. No additional civil penalty shall be assessed until the person alleged to be in violation has been notified as provided in G.S. § 113A-61.1(b). The notice shall describe the violation with reasonable time frames for corrective action specified, and warn that failure to correct the violations within the period specified will result in the assessment of a civil penalty or other enforcement action. If after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of the violation. However no time period for compliance need be given for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties.

- (2) *Civil penalty assessment for the date of the initial violation.*

For each acre of land disturbed on a tract which has no approved erosion and sediment control plan required by Chapter 154 of the Haywood County Code of Ordinances, the civil penalty assessment shall be \$500 per acre for the date of the initial violation. If an acceptable sediment and erosion control plan is submitted to the County within a reasonable time from the date of the initial violation (for this application and analysis, the date of the initial violation will be considered as “day one”), 45% of the civil penalty may be forgiven. If acceptable or reasonable measures are installed on the tract in violation before or by the end of the fifth day from the date of the initial violation (for this application and analysis, the date of the initial violation will be considered as “day one”), fortyfive percent (45%) of the civil penalty may be forgiven. In any circumstance, if the violation for the “no approved plan”

condition is committed knowingly and willfully, the civil penalty shall be no less than 100% of the total civil penalty for the date of the initial violation.

- (3) The civil penalty may be \$100 plus \$1 for each linear foot of buffer zone violated for failure to retain along a lake or natural watercourse a buffer zone of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity.
- (4) The civil penalty shall be \$100 and may include an additional \$5 for each linear foot of streamside buffer zone violated for failure to provide along trout waters an undisturbed buffer zone twenty-five feet wide or of sufficient width to confine visible siltation by natural or artificial means within 25% of that portion of the buffer zone nearest the land-disturbing activity, whichever is the greater width.
- (5) A minimum civil penalty of \$50 per day may be assessed for each applicable violation listed below. The applicable daily civil penalties shall continue and accrue for each day the tract is in violation of the Chapter until the site is deemed by the County to be in compliance with this Chapter:

\$50 per day for no approved plan, § 154.20(A)(6) and § 154.20(B)(4) of this Chapter; G.S. 113A54(d)(4), G.S. 113A-57(4) and 15 NCAC 04B.0107.

\$50 per day for failure to follow approved plan, § 154.70(A), (B) and § 154.42(a) of this Chapter; G.S. 113A-61.1(a) and 15A NCAC 04B.0113.

\$50 per day for “revised plan required”, § 154.41(A) and (B) of this Chapter; G.S. 113A-54.1(b) and 15A NCAC 04B.0118(a).

\$50 per day for failure to provide adequate ground cover, § 154.20(B)(2) and (3) or (if in HQW zone) § 154.23(B)(5) of this Chapter; G.S. 113A-57(3) and 15A NCAC 04B.0107(b) or (if in HQW zone) 15A NCAC 04B.0124(e).

\$50 per day for insufficient measures to retain sediment on site, § 154.20(B)(3) of this Chapter; G.S. 113A-57(3).

\$50 per day for “failure to take all reasonable measures,” § 154.20(A)(1) of this Chapter; 15A NCAC 04B.0105.

\$50 per day for “inadequate buffer zone,” § 154.20(B)(1) of this Chapter; G.S. 113A-57(1).

\$50 per day for “graded slopes and fills too steep,” § 154.20(B)(2) and (if in HQW zone) § 154.23(B) of this Chapter; G.S. 113A-57(2) and (if in HQW zone) 15A NCAC 04B.0124(d).

\$50 per day for “unprotected exposed slopes,” § 154.20(B)(2) of this Chapter; G.S. 113A-57(2).

\$50 per day for failure to maintain erosion control measures, § 154.42(A)(B) of this Chapter; 15A NCAC 04B.0113.

\$50 per day for failure to secure from the County a valid Land-Disturbing Permit prior to conducting a land-disturbing activity, § 154.60 of this Chapter.

\$50 per day for failure to comply with the design and performance standards for High Quality Water Zones (HQP's), § 154.23 of this Chapter.

(6) *Restoration of areas affected by failure to comply.*

The County may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by § 154.20(B)(3) of this Chapter (and G.S. 113A-64.1), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this Chapter. ((1993 (Reg. Sess., 1994), c. 776, s.12.))

(7) *Severability.*

If any section or sections of this Chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

(Ord. passed - - 88; Am. Ord. passed 6-1-90; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Am. Ord. passed 7-23-07; Am. Ord. passed 1-3-22)

**§ 154.100 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 154 originally adopted August 1, 1988, and all subsequent amendments, and shall be effective on and after January 3, 2022 ~~July 19, 2021~~.



## CHAPTER 155: FLOOD DAMAGE PREVENTION

### Section

#### *General Provisions*

- 155.01 [Definitions](#)
- 155.02 [Statutory authorization](#)
- 155.03 [Findings of fact](#)
- 155.04 [Statement of purpose](#)
- 155.05 [Objectives](#)
- 155.06 [Lands to which chapter applies](#)
- 155.07 [Basis for establishing the areas of special flood hazard](#)
- 155.08 [Establishment of development permit](#)
- 155.09 [Compliance](#)
- 155.10 [Abrogation and greater restrictions](#)
- 155.11 [Interpretation](#)
- 155.12 [Warning and disclaimer of liability](#)

#### *Flood Hazard Reduction*

- 155.30 [General standards](#)
- 155.31 [Specific standards](#)
- 155.32 [Standards for streams without established base flood elevations and/or floodways](#)
- 155.33 [Standards for subdivision proposals](#)

#### *Administration and Enforcement*

- 155.50 [Designation of local administrator; duties and responsibilities](#)
- 155.51 [Development permit and certification requirements](#)
- 155.52 [Administrative procedures](#)
- 155.53 [Variance procedures](#)
  
- 155.99 [Penalty](#)
- 155.100 [Effective Date and Revision of Original Ordinance](#)

## CHAPTER 157: MANUFACTURED HOME PARK

### Section

- 157.01 [Authority and purpose](#)
- 157.02 [Definitions](#)
- 157.03 [Jurisdiction](#)
- 157.04 [Permit required to construct and operate a manufactured home park](#)
- 157.05 [Criteria for issuance of permit](#)
- 157.06 [Issuance of a manufactured home park construction permit and manufactured home park operating permit](#)
- 157.07 [Requirements for all manufactured home parks](#)
- 157.08 [Penalty for violation](#)
- 157.09 [Appeals and requests for variances](#)
- 157.10 [Amendments](#)
- 157.11 [Validity](#)
- 157.12 [Abrogation](#)
- 157.13 [Effective date](#)

[Appendix A](#): Application for a Variance from the Haywood County Code of Ordinances, Chapter 157: Manufactured Home Park

### § 157.01 AUTHORITY AND PURPOSE.

This chapter is enacted pursuant to the general police powers granted to Haywood County by G.S. §153A-121. The purpose of this chapter is to protect the health, safety, and general welfare of citizens of the county, particularly those who are residents of manufactured home parks.

### § 157.02 DEFINITIONS.

The following words, terms and phrases, shall have the specific meaning ascribed to them herein. All other words, terms and phrases shall have their ordinary meaning of common usage in the English language.

***ALL-WEATHER SURFACE ROAD.*** A roadbed that supports routine vehicular traffic and has a minimum thickness of six inches (6”) of compacted crushed rock or stone, including dust.

**APPLICANT.** Any person, whether the person financially responsible for the development activity or his/her duly appointed agent, who submits a formal application, to the Planning Board or to the ordinance administrator, for a permit to conduct development activities controlled by this chapter, or who files a motion to appeal a decision by the Board or the ordinance administrator as contained in this chapter.

**APPROVED MANUFACTURED HOME PARK PLAN.** A written course of action including maps, drawings, calculations, designs, or assumptions, found by the Planning Board or the ordinance administrator to satisfy all requirements of this chapter which details the timing and proper installation of measures, devices, appurtenances, buffers, items of infrastructure, and other items which have a reasonable probability, if implemented, of succeeding in satisfying the spirit and intent of this chapter.

**COMMUNITY SANITARY SEWER SYSTEM.** A sanitary sewer system subject to the rules and regulations of the NC Department of Environment and Natural Resources.

**COMMUNITY WATER SYSTEM.** A water system subject to the rules and regulations of the NC Department of Environment and Natural Resources.

**CONTINUING VIOLATION.** Those violations of this chapter or an approved development plan which are occurring after the date of compliance as set forth in a notice of violation served upon the person responsible for any activity subject to the requirements and conditions of this chapter.

**CUL-DE-SAC.** Local roads with one (1) end open for vehicular access and the other end terminating in a vehicular turnaround. The length of the cul-de-sac road shall be measured along the center line from its intersection with the center line of the road from which it runs to the center of the cul-de-sac turnaround.

**DEVELOP.** To convert land to a new purpose so as to use its resources, or to use the land for residential, commercial or industrial purposes.

**DEVELOPER.** Any person, corporation, partnership, or other legal entity engaged in development, or proposed development, of a manufactured home park.

**DEVELOPMENT.** A tract containing improvements as defined as follows, or the act of improving a tract of land involving land-disturbing activity; or the improvement of a tract of land for any purposes other than agriculture, forestry, or mining. However, development on land owned or managed by the federal government or the state or its political subdivisions is not included within this definition and is not subject to the provisions of this chapter.

**DRIVEWAY.** Begins at the property line of a lot abutting a public road, private road, easement, or private right-of-way, and leads to a building, use, or structure on that lot. A *DRIVEWAY* only serves a single building, use, or structure.

**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.

**FAMILY.** Any degree of lineal kinship or three degrees of collateral kinship described under G.S. §104A-1. By way of example, such degrees of kinship would include children, grandchildren, great-grandchildren, parents, grandparents, brothers and sisters, uncles and aunts, and nieces and nephews.

**MAJOR MANUFACTURED HOME PARK.** A proposed manufactured home park where eleven (11) or more spaces will result after the park is complete.

**MANUFACTURED HOME.** A single-family dwelling unit suitable for year-round occupancy; containing the same water supply, waste disposal, and utility conveniences as immobile housing; designed to be transported, in one or more sections, on its own chassis and wheels and designed to be used with or without a permanent foundation when connected to required utilities. The term also includes park trailers, park model RV's and other transportable structures placed on a site and intended to be improved property.

**MANUFACTURED HOME PARK.** A tract of land upon which two or more manufactured homes are located and which are occupied as residences and for which payment to the landowner is being required. Situations where an individual property owner allows family (as herein defined) to maintain manufactured homes upon his property free of charge are not considered manufactured home parks for purposes of this chapter.

**MANUFACTURED HOME PARK CONSTRUCTION PERMIT.** A permit issued by the planning department authorizing the manufactured home park developer to construct a manufactured home park in accordance with an approved park plan.

**MANUFACTURED HOME PARK OPERATING PERMIT.** A permit issued by the planning department to a manufactured home park owner or operator upon completion of a manufactured home park which conforms to the requirements of this chapter.

**MINOR MANUFACTURED HOME PARK.** A proposed manufactured home park where four (4) to ten (10) spaces will result after the park is complete. One phase of planned development cannot be considered a minor manufactured home park unless the entire development does not exceed ten (10) spaces.

**ORDINANCE ADMINISTRATOR.** The individual or office designated by the county manager or County Commissioners to enforce the provisions of this chapter.

**PERSON.** Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

***PERSON RESPONSIBLE FOR THE VIOLATION.***

(1) The developer or other person who has or holds himself or herself out as having financial or operational control over the development activity; and/or

(2) The landowner or person in possession or control of the land when he/she has directly or indirectly allowed the development activity or has benefited from it.

***PRIVATE STREET OR ROAD.*** An undedicated private right-of-way which affords access to abutting properties and requires a subdivision streets disclosure statement in accordance with G.S. §136-102.6.

***PUBLIC STREET OR ROAD.*** A development street or road dedicated to the public to provide ingress and egress to real estate which have been laid out for the purpose of providing home sites, or other purposes, and such street or road shall be constructed according to the minimum construction standards of the North Carolina Division of Highways, with the intent of requesting that it be added to the state maintained system.

***SETBACK.*** A strip of stable or undisturbed land located within the boundary of a tract being developed, and which is located between the development activity and any adjoining property, street or road, or natural resource.

***SITE NUMBER.*** The number attached in four-inch high permanent lettering to the side of the manufactured home facing the street.

***SPECIAL MANUFACTURED HOME PARK.*** A proposed park where three (3) or fewer spaces on a new or existing private road will result after the park is complete.

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

***TRACT.*** All contiguous land and/or bodies of water being developed or to be developed as a unit, regardless of ownership.

***VIOLATION.*** Any activity covered under the provisions of this chapter planned or carried out without regard to all the contents and responsibilities thereof.

**§ 157.03 JURISDICTION.**

The provisions of this chapter shall be applicable to all new and existing manufactured home parks and any addition or expansion of existing manufactured home parks lying within the unincorporated areas of the county, but shall not be applicable to and shall not be enforced within the corporate limits or jurisdiction of any municipality. Section 157.05 shall not apply to manufactured home parks existing at the effective date of this chapter.

**§ 157.04 PERMIT REQUIRED TO CONSTRUCT AND OPERATE A MANUFACTURED HOME PARK.**

(A) It shall be unlawful for any person, corporation, partnership or other entity to commence construction of any manufactured home park as heretofore defined without first obtaining a manufactured home park construction permit from the ordinance administrator.

(B) It shall be unlawful for any person, corporation, partnership or other entity to operate any manufactured home park as heretofore defined without first obtaining a manufactured home park operating permit from the ordinance administrator.

**§ 157.05 CRITERIA FOR ISSUANCE OF PERMIT.**

(A) In determining whether or not to issue a construction permit for the establishment of a manufactured home park, the ordinance administrator shall require the applicant to submit two copies of the preliminary site plan along with the manufactured home park permit application. The plan shall be clearly and legibly drawn at a scale of not more than one inch = 100 feet. The plan shall depict or have attached the following information:

- (1) Title block containing the following:
  - (a) Names, addresses and telephone numbers of the owner(s) of record;
  - (b) Name of the manufactured home park (approval required by Ordinance Administrator);
  - (c) Accurate site location and directions;
  - (d) Date of plan;
  - (e) Scale (graphic or written); and
  - (f) Tax parcel identification number, PIN.

- (2) The following project data:
  - (a) Total area to be developed;
  - (b) Total number of lots and placement sites; and
  - (c) Proposed date for initiation of construction.
- (3) The following road information:
  - (a) Location of roads and drives within or abutting the park (show dimensions and grade); and
  - (b) Road names.
- (4) The following utilities information:
  - (a) Provisions for and locations of electrical and telephone service; and
  - (b) Proposed sanitary sewer and water distribution system.
- (5) Other details to be shown are as follows:
  - (a) North arrow;
  - (b) Any natural features affecting the site including any off-site areas draining storm water runoff through any part of the proposed site, locations of proposed cuts and fills;
  - (c) The location of the flood hazard, floodway and flood fringe boundaries, if available from county flood maps;
  - (d) Location of lots and lot numbers; and
  - (e) Storm drainage facility and discharge points.

(B) An as-built (as constructed) site plan shall be provided prior to issuance of the park permit. If the preliminary plan is identical to the as-built plan, the final site plan is not required. The plan shall be clearly and legibly drawn at a scale of not more than one inch = 100 feet. The plan shall depict or have attached the following information:

- (1) Title block containing the following:
  - (a) Name and address of the owner(s) of record;
  - (b) Name of the manufactured home park;

- (c) Accurate site location and directions;
  - (d) Date of plan;
  - (e) Scale (graphic or written); and
  - (f) Tax parcel identification number, PIN.
- (2) The following project data:
- (a) Total area developed;
  - (b) Total number of lots and placement sites; and
  - (c) Date construction was initiated.
- (3) The following road information:
- (a) Location of roads and drives within or abutting the park (show dimensions and grade); and
  - (b) Road names.
- (4) The following utilities information:
- (a) Provision of electrical and telephone service;
  - (b) Sanitary sewer location and approval by the North Carolina Division of Environment and Natural Resources or the Sanitary District or the county health department, as applicable; and
  - (c) Water distribution system location and approval by the North Carolina Division of Environment and Natural Resources or the Sanitary District, county health department or the state Department of Health, as applicable.
- (5) Other details to be shown are as follows:
- (a) North arrow;
  - (b) Any natural features affecting the site including any off-site areas draining storm water runoff through any part of the proposed site, locations of proposed cuts, and fills;
  - (c) The location of the flood hazard, floodway and flood fringe boundaries, if available from county flood maps;

- (d) Location of lots and lot numbers; and
- (e) Storm drainage facility and discharge points.

(C) The plan must satisfactorily document that the following provisions will be adhered to and such provisions must be adhered to throughout the operation of the manufactured home park:

- (1) *Street-construction standards.*

The Manufactured Home Park Roads Minimum Construction Standards are as set forth in this chapter and as shown in Schedule I.

**NOTE: Private roads constructed to the minimum standards of this chapter WILL NOT meet NC Department of Transportation minimum subdivision road requirements. As a result, the NC Department of Transportation MAY NOT accept these roads without additional improvement(s).**

(a) Road Standards. Manufactured Home Park roads may be designated public or private.

1. Public Manufactured Home Park roads shall be built to minimum construction standards of the NC Department of Transportation as required by G.S. §136-102.6. The public subdivision road standards are contained in NC Division of Highways Subdivision Roads Minimum Construction Standards.

2. All minor and major Manufactured Home Park roads intersecting a state maintained road shall have a stop sign that conforms with NC Department of Transportation specifications, installed by the developer and maintained by the developer or homeowners association. After the North Carolina Department of Transportation accepts the Manufactured Home Park road(s), the developer or homeowners association shall not be responsible for the maintenance of road name and stop signs.

3. Private minor and major Manufactured Home Park roads shall be built to minimum construction standards set forth in Schedule I of this chapter.

4. No road in an area subject to flooding shall be approved if it is more than two feet (2') below the elevation of a 100-year flood. The Haywood County Planner and/or Planning Board may require, where necessary, profiles and elevation of roads for areas subject to flooding. Fill may be used for roads provided such fill does not increase flood heights. Drainage openings for roads in areas subject to flooding shall be provided and shall be so designed as to not restrict the flow of water and increase flood heights.

5. Every road and any associated storm water drainage facility shall be designed to accommodate and convey the runoff from a ten- (10) year storm in a non-erosive, safe and stable manner to discharge point(s).

(b) Road Design. Private Manufactured Home Park roads shall meet the following minimum road design standards:

1. New Road Right-of-Way Width. All Manufactured Home Park roads shall have a minimum right-of-way of forty-five feet (45') unless the road is completed prior to filing the final plat for approval. In this case, a thirty foot (30') right-of-way along the centerline shall be permitted. **NOTE: NC Department of Transportation requires a fifty foot (50') minimum right-of-way for a dead-end road more than 2,500 feet in length or a loop road more than one (1) mile in length.**

2. Previously Platted Road Right-of-Way Width. Where a right-of-way less than forty-five feet (45') was recorded or platted prior to the adoption of this chapter and a forty-five (45') right-of-way is not now obtainable for the purpose of accessing the Manufactured Home Park for either a minor or major manufactured home park, the following minimum standards shall be met by the developer:

a. The developer or his assignee shall submit a copy of the recorded plat or deed describing and identifying the right-of-way.

b. The access road shall be a minimum twelve foot (12') all-weather surface road for a minor manufactured home park or an eighteen foot (18') all-weather surface road for a major manufactured home park unless the previously recorded right-of-way (agreement which provides sole access to the development) will not allow these minimum standards.

c. A disclosure statement shall be placed on the final plan stating "This Manufactured Home Park is accessed by a road which does not have a forty-five foot (45') minimum right-of-way and/or does not have the minimum recommended roadbed width. Access to homes within the Manufactured Home Park may be limited. The NC Department of Transportation is unlikely to accept and maintain roads within the Manufactured Home Park as public road(s)."

3. Cul-de-sacs. The required turnaround on a dead-end road in a Manufactured Home Park shall have an unobstructed roadway radius of not less than twenty-five feet (25'). If the road length does not exceed fifteen hundred feet (1,500') and if construction difficulties will not permit a turnaround, the use of a modified "Y" or "T" with one (1) extension extending at least twenty-five feet (25') and the other extending a minimum of fifty feet (50') and a maximum of one hundred feet (100') which will allow a vehicle with a wheel base of at least twenty-five feet (25') to complete a turning movement with a maximum of one (1) backing movement, shall be permitted.

4. Road Grades. Maximum road grades shall be twenty percent (20%). In extreme cases, where the terrain prohibits a lesser grade to attain access to a nearby area, a maximum grade of twenty-five percent (25%) is permissible if a professional engineer, currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors, designs and certifies grade and slope stability of the portion from 20.01% to 25%. For any road containing grade(s) exceeding twenty percent (20%), the following minimum standards shall be met by the developer:

a. The developer shall submit a report by a professional engineer, with civil engineering qualifications, or professional land surveyor currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors, stating that there are no reasonable alternative routes to access the adjacent area which do not exceed twenty percent (20%) grade.

b. Any road exceeding fifteen percent (15%) grade shall meet NC Department of Transportation minimum construction and paving (bituminous) specifications for the length exceeding fifteen percent (15%) grade plus an additional three hundred feet (300') on each side of the length exceeding fifteen percent (15%) grade or until the road grade reaches eight percent (8%) over a fifty foot (50') section. The least distance shall be enforced. A professional engineer, with civil engineering qualifications, or registered land surveyor currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors shall identify on the plan(s) the road(s) which have grades exceeding fifteen percent (15%), the point(s) where the fifteen percent (15%) grade begins and terminates, and the additional three hundred foot (300') segments to be paved on each side. Should it be necessary to go beyond property lines to reach a distance of three hundred feet (300') or for the purpose of measuring or determining the existence of an average grade of eight percent (8%) over a fifty foot (50') section of road, only that portion of the road within the subject property is required to be paved.

c. A disclosure statement shall be placed on the final plan stating “This Manufactured Home Park contains roads which exceed fifteen percent (15%) grade(s). Access to homes within the Manufactured Home Park may be limited. The NC Department of Transportation is unlikely to accept and maintain roads within the Manufactured Home Park as public road(s).”

(c) Connections with State Road System. If a new Manufactured Home Park road to be dedicated as public or private will connect to a state system road, a permit authorizing construction on state right-of-way may be required from the Division of Highways before beginning construction. If required, applications shall be made to the District Engineer of the NC Department of Transportation having jurisdiction in this area.

(d) Intersections. When a new Manufactured Home Park road connects to a state maintained road, the design standards of the NC Department of Transportation for intersections shall be required.

**SCHEDULE I**

*DESIGN CRITERIA FOR PRIVATE ROADS*

<b>Minimum Road Right of Way Width</b>	
Shoulder Section	<b>45'</b>
(If road is completed prior to filing final plat)	<b>30'</b>
<b>Minimum Road-Bed Width for Eleven (11) Spaces or More</b>	
Shoulder Section	<b>18'</b>
<b>Minimum Road-Bed Width for Ten (10) or Less Spaces</b>	
Shoulder Section	<b>12'</b>
<b>Maximum Grade</b>	
(NC DOT Classification-Hill Terrain)	<b>20%</b>
(Designed and certified by Professional Engineer)	<b>25%</b>
<b>Minimum Shoulder Width</b>	
Shoulder Section (must be stabilized)	<b>2'</b>
<b>Minimum Cul-de-Sac Radius</b>	
Right of Way Shoulder Section	<b>50'</b>
<b>Minimum Cul-de-Sac Radius for Roadbed</b>	
Turning Radius Shoulder Section	<b>25'</b>

**\*Any road exceeding fifteen percent (15%) grade shall meet NC Department of Transportation minimum construction and paving (bituminous) specifications for the length exceeding fifteen percent (15%) grade plus an additional three hundred feet (300') on each side of the length exceeding fifteen percent (15%) grade or until the road grade reaches eight percent (8%) over a fifty foot (50') section.**

(2) *Manufactured home spaces.*

(a) Each manufactured home space shall be clearly defined.

(b) Each manufactured home space shall be located on ground not susceptible to flooding and graded so as to prevent any water from ponding or accumulating on the premises.

(c) Each manufactured home shall be located at least 30 surveyed feet from any other manufactured home and at least 15 surveyed feet from the manufactured home park boundary.

(d) Manufactured home setbacks from streets:

1. All units must be located outside the right-of-way.

2. All units must be located a minimum of fifteen feet (15') from any road surface.

3. All units must be located twenty five feet (25') from all state and federal highways.

(e) Parking requirements:

1. Minimum 400 square foot of area for each unit.

2. Parking area must be located outside the road shoulder area.

3. If parking area is divided, must be in equal 200 square foot sections.

(3) The county building inspections department shall inspect electrical service before a park may receive final approval.

(4) The ordinance administrator, the county health department, the county building inspections office, and erosion and sedimentation control office are authorized and directed to make such inspections as necessary to determine satisfactory compliance with this chapter, and shall have free access to the premises of manufactured home parks at reasonable times for the purpose of inspections.

(5) Each manufactured home will have a four-inch (4") site number of permanent nature attached to its street side.

(6) It is recommended that each manufactured home have an accessible, frostproof water cutoff valve outside the skirting.

**§ 157.06 ISSUANCE OF A MANUFACTURED HOME PARK CONSTRUCTION PERMIT AND MANUFACTURED HOME PARK OPERATING PERMIT.**

(A) After the manufactured home park application is approved, the planning department shall issue a manufactured home park construction permit. The intent of this permit is to enable the execution of the park plan in the field 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 chapter.

(B) If the construction of the park has not begun within 12 months from the issue date of the manufactured home park construction permit, the permit shall be deemed expired. The administrator may grant a one-year extension of the manufactured home park construction permit if the developer shows cause.

(C) When the construction of the manufactured home park is completed, the developer shall apply to the planning department for a manufactured home park operating permit. If the manufactured home park conforms to the park plan approved by the administrator and other agencies, the planning department shall issue the developer a manufactured home park operating permit. If the park does not conform to the approved plan, the planning department shall delay issuance of the manufactured home park operating permit until the park comes into conformity with the approved development plans and the requirements of this chapter. The manufactured home park operating permit issued to the developer shall constitute authority to lease or rent spaces in the manufactured home park.

(D) All pre-existing manufactured home parks shall apply for a Pre-existing Manufactured Home Park Operating Permit and submit a diagram, drawing, sketch or otherwise acceptable map of the pre-existing conditions within the park by 180 days of the date of adoption of the ordinance.

**§ 157.07 REQUIREMENTS FOR ALL MANUFACTURED HOME PARKS.**

The following requirements shall be applicable to all manufactured home parks, whether new, existing or an expansion of an existing park:

(A) Each park owner shall maintain the park property in a safe and sanitary condition. The park owner shall not permit the accumulation upon such property, except in approved receptacles, of garbage, refuse, rubbish, litter, trash or other discarded materials, including used building materials, batteries, scrapped appliances, rags, paper, rubber, dismantled or wrecked automobiles or parts thereof, and other ferrous or nonferrous material. Safety hazards such as, but not limited to, open wells, open manholes and abandoned appliances shall be promptly corrected or removed.

(B) It is the duty of the park owner to ensure that all manufactured homes be equipped with underskirting within 60 days of approval of electrical service. If the park owner also owns the home, the underskirting shall be provided by the park owner. All skirting shall be of a material and type manufactured for that purpose and shall be securely attached. Skirting shall be sized from the

ground to the lower perimeter of the structure and shall be maintained free from broken sections or pieces. Masonry foundation shall be approved as an alternative to this requirement.

(C) Every home shall be provided with an adequate potable water supply system. “Potable water supply” means direct connection to a well, to a public water utility or equivalent water service delivery system, and does not include water delivered through a hose or via containers. Every home shall be properly connected to an approved water and sewer system as long as the home is occupied.

#### § 157.08 PENALTY FOR VIOLATION.

The establishment or maintenance of a manufactured home park in violation of this chapter shall be ~~a misdemeanor~~ subject to the ~~penalties and~~ civil enforcement provisions of G.S. §153A-123.

       - Whenever the ordinance administrator determines that a mobile home park is being operated in violation of the ordinance, a notice will be issued to the owner and/or operator of the park which shall describe the violations with particularity. The owner and/or operator shall be given a reasonable period of time from the issuance of the notice to correct the deficiencies before any legal proceedings are initiated, except that the notice period may be reduced to no less than five working days upon a finding by the ordinance administrator that the violations are of such serious nature as to constitute an immediate danger to health and safety.

       No legal action shall be initiated against the park owner, if the park owner files an action for summary ejectment against the owner of the manufactured home, which is the subject of the notice to correct deficiencies, within the notice period. Failure on the part of the developer of the manufactured home park to comply with any enforceable provision of this chapter shall result in the assessment of a civil penalty of no less than fifty dollars (\$50.00) per violation for each day the violation continues.

(Ord. passed 1-1-04; Am. Ord. passed 1-3-22)

#### § 157.09 APPEALS AND REQUESTS FOR VARIANCES.

Where, because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this chapter would cause an unnecessary hardship, the Planning Board may authorize a variance, if such variance can be made without destroying the intent of this chapter. Any variance thus authorized is required to be entered in writing in the minutes of the meeting of the Planning Board and the reasoning on which the departure was justified set forth.

(A) No hearing shall be held by the Board unless written notice thereof is filed within thirty (30) days after the interested party or parties receive the decision or by the Manufactured Home Park Ordinance Administrator or the aggrieved party or parties receive constructive notice to the decision. Applications shall be filed with the Manufactured Home Park Ordinance Administrator, who shall act as Clerk for the Board in receiving this notice. It shall be the duty of the Administrator to notify all the Board members as soon as possible of the application. All applications for a variance shall be

made on the form entitled “Application for a Variance from the Haywood County Code of Ordinances, Chapter 157: Manufactured Home Park”, as set forth in Appendix A. All information required on the form shall be complete before an application shall be considered as having been filed.

(B) After receipt from the Manufactured Home Park Ordinance Administrator of the completed Application for a Variance, the Chairman shall schedule the time for the hearing, which shall be at the next regularly scheduled meeting. The application must be filed a minimum of fourteen (14) days prior to the next regularly scheduled meeting in order to be placed on that agenda.

The Clerk shall give notice of the hearing by mailing notices of the hearing to adjoining property owners and other parties to the action at least five (5) days prior to the hearing.

(1) Conduct of Hearing: Parties or their attorney shall appear in person at the hearing. The order of business for each hearing shall be as follows:

(a) The Chairman, or such person as he shall direct, shall give a preliminary statement of the case.

(b) At the discretion of the Chairman, witnesses will be sworn in.

(c) The applicant shall present the arguments and support of his case or application. Witnesses in favor of the applicant’s request may be called and factual evidence submitted.

(d) Applicants and proponents may be questioned by the Board.

(e) Persons opposed to granting the application shall present their argument. Witnesses may be called and actual evidence submitted in opposition.

(f) Opponents may be questioned by the Board.

(g) Opponents may be allowed to cross examine all witnesses.

(h) The applicant may be allowed to inspect all evidence offered against him/her.

(i) Both sides will be permitted to present rebuttals to opposing testimony.

(j) The Board may, at its discretion, view the premises and obtain additional facts of matter before arriving at a determination of the case.

(k) The Board shall discuss the application and develop their conclusions.

(l) Motion.

(2) Decisions:

(a) Vote: The concurring vote of four-fifths of the attending membership of the Board shall be necessary to effect any variation from terms of the Ordinance.

No board member may be excused from voting except when immediate personal or financial interests preclude impartial consideration of issues involved. A failure to vote by such a member who is present at a meeting place or who has withdrawn without being excused by a majority vote of the remaining members present shall be counted as an affirmative vote. An affirmative vote is a vote in favor of the applicant.

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

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

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

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

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

d. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance and then comes to the Board for relief.

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

2. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit and intent.

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

(c) In granting the variance, the Board may attach hereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this Haywood County Code of Ordinances Chapter 157: Manufactured Home Park.

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

1. Time: Decisions by the Board shall be made not more than thirty-six (36) days following the date of the hearing.

2. Form: Written notice of the decision and the reasons therefore in a case shall be given to the applicant by the Clerk as soon as practicable after the case has been decided. The final decision of the Planning Board shall be shown in the record of the case as entered in the Minutes of the Board, and signed by the Chairman and the Clerk upon approval of the Minutes of the Board. The Minutes shall record the reason for the decision, the summary of the evidence introduced, and the findings of fact and conclusions of the law made by the Board.

(3) Public Record of Decisions: The decisions of the Board, as filed in its Minutes, shall be a public record, available for inspection at all reasonable times. Minutes shall be kept by the Clerk who shall make them available to the public. Every decision of the Haywood County Planning Board shall be filed in the office of the Manufactured Home Park Ordinance Administrator and a written copy thereof shall be delivered to the applicant and adjacent property owners by personal service or registered mail.

(4) Decisions and Appeals: Every decision by the Planning Board regarding a variance from Haywood County Code of Ordinances Chapter 157: Manufactured Home Park shall be subject to review by the Haywood County Board of Commissioners. All appeals shall be taken to the Haywood County Board of Commissioners within thirty (30) days after the decision of the Planning Board is filed in the Office of the Manufactured Home Park Administrator or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later. Any person aggrieved by the decision of the Haywood County Board of Commissioners or any taxpayer may appeal the decision to the Superior Court. All appeals shall be taken to the Superior Court within thirty (30) days after the decision of the Haywood County Board of Commissioners is filed in the Office of the Clerk or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.

(C) Amendments: These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four-fifths of the Planning Board, provided that such amendment may be presented in writing at a meeting of the Board preceding the meeting at which the vote is taken.

**§ 157.10 AMENDMENTS.**

(A) The Board of County Commissioners may from time to time amend the terms of this chapter, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the Planning Board for review and recommendation. The Planning Board shall have thirty (30) working days from the time the proposed amendment is submitted to it within which to submit its recommendation to the County Commissioners. If the Planning Board fails to submit a report within the specified time, it shall be deemed to have recommended approval of the amendment.

(B) No amendment shall be adopted by the Board of County Commissioners until they have held a public hearing on the amendment. Notice of the hearing shall be published in a newspaper of general circulation in Haywood County at least once a week for two (2) successive calendar weeks prior to the hearing in accordance with G.S. §153A-323.

**§ 157.11 VALIDITY.**

Should any section or provision of this chapter be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this chapter as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**§ 157.12 ABROGATION.**

It is not intended that this chapter repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations, or permits previously adopted or issued pursuant to law. However, where this chapter imposes greater restrictions, the provisions of this chapter shall govern. Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply to any aspect of developing or operating a manufactured home park.

**§ 157.13 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE.**

This revised ordinance revises and supplants the ordinance in Chapter 157 originally adopted January 1, 2004, and all subsequent amendments, and shall be effective on and after January 3, 2022.

~~This chapter shall become effective January 1, 2004.~~

APPENDIX A

Application for a Variance from the Haywood County Code of Ordinances, Chapter 157: Manufactured Home Park

Date \_\_\_\_\_ Application No. \_\_\_\_\_

Applicant's Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PIN: \_\_\_\_\_

Directions to the property from Waynesville: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applications shall contain the following:

- 1. A complete and detailed description of the proposed variance, (see the rest of this form), together with any other pertinent information which the applicant feels would be helpful to the Haywood County Planning Board in considering the application.

TO THE HAYWOOD COUNTY PLANNING BOARD:

I, \_\_\_\_\_ (Owner/Agent), hereby petition the Haywood County Planning Board for a variance from the literal provisions of Chapter 157: (Manufactured Home Park) Haywood County Code of Ordinances because I am prohibited from using the parcel of land described in this form in a manner demonstrated within this application. I request a variance from the following provisions of the Ordinance (cite sections):

\_\_\_\_\_  
\_\_\_\_\_

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Haywood County Planning Board shall reach three conclusions as a prerequisite to the issuance of a variance:

(a) that there are practical difficulties or unnecessary hardships in carrying out the strict letter of the ordinance,

(b) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit, and

(c) that in granting the variance the public safety and welfare have been assured and substantial justice has been done.

In the space provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Planning Board that it can properly reach these three required conclusions:

(1) THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed three rules to determine whether in a particular situation “practical difficulties or unnecessary hardships” exist. State facts and arguments in support of each of the following:

(a) If he/she complies with the provisions of the ordinance, the property owner can secure no reasonable return from or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

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(b) The hardship of which the applicant complains results from unique circumstances related to the applicants land. (Note: hardships suffered by the applicant in common with his neighbors do not justify a variance. Also, unique personal family hardships are not relevant since a variance, if granted, runs with the land.)

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(c) The hardship is not the result of the applicant's own actions.

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(2) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES THE SPIRIT. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

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(3) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

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**Haywood County – Land Usage**

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Transmitted by

Date: \_\_\_\_\_

\_\_\_\_\_  
Received by (Clerk to the Board)

Date: \_\_\_\_\_

IN THE EVENT THAT ANY DISCREPANCIES EXIST BETWEEN THE CRITERIA OUTLINED ON THIS FORM AND CHAPTER 157 (MANUFACTURED HOME PARK) OF THE HAYWOOD COUNTY CODE OF ORDINANCES, CHAPTER 157 SHALL PREVAIL.

**GENERAL PROVISIONS****§ 155.01 DEFINITIONS.**

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

**ACCESSORY STRUCTURE.** Sheds, detached garages, and the like.

**ADDITION (TO AN EXISTING BUILDING).** Any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.

**APPEAL.** Request from a review of the local administrator's interpretation of any provision of this chapter or a request for a variance.

**AREA OF SHALLOW FLOODING.** A designated AO or VO zone on a community's flood insurance rate map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

**AREA OF SPECIAL FLOOD HAZARD.** The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

**BASE FLOOD.** The flood having a one percent chance of being equaled or exceeded in any given year.

**BASEMENT.** That lowest level or story which has its floor subgrade on all sides.

**BREAKAWAY WALL.** A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. A breakaway wall shall have a design safe loading resistance of not less than ten and no more than 20 pounds per square foot. A wall with loading resistance of more than 20 pounds per square foot requires an architect or professional engineer's certificate.

**BUILDING.** Any structure built for support, shelter, or enclosure for any occupancy or storage.

**DEVELOPMENT.** Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

***ELEVATED BUILDING.*** A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns, (posts and piers), shear walls, or breakaway walls.

***EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION.*** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed (including at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of this chapter.

***EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.*** The preparation of the additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).

***FLOOD or FLOODING.*** A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters: and,
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

***FLOOD HAZARD BOUNDARY MAP (FHBM).*** An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

***FLOOD INSURANCE RATE MAP (FIRM).*** An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

***FLOOD INSURANCE STUDY.*** The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

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

***FLOOR.*** The top surface of an enclosed area in a building (including basement); for example, top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

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

**HIGHEST ADJACENT GRADE.** The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

**HISTORIC STRUCTURE.** Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the United States Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places;

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified:

(a) By an approved state program as determined by the Secretary of Interior, or

(b) Directly by the Secretary of Interior in states without approved programs.

**LEVEE.** A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**LEVEE SYSTEM.** A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that the enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, park model RV's and other transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

**MANUFACTURED HOME PARK OR SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL.** The average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the flood plain. For purposes of this chapter, the term is synonymous with National Geodetic Vertical Datum (NGVD).

**NATIONAL GEODETIC VERTICAL DATUM (NGVD).** As corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the flood plain.

**NEW CONSTRUCTION.** Structures for which the **START OF CONSTRUCTION** commenced on or after the effective date of this chapter.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after the effective date of this chapter.

**NON-CONFORMING BUILDING OR USE.** Any legally existing building or use which fails to comply with the provisions of the chapter.

**RECREATIONAL VEHICLE.** A vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and,
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

**RECREATIONAL VEHICLE SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two or more recreational vehicle lots for sale.

**REMEDY A VIOLATION.** To bring the structure or other development into compliance with state or local flood plain management regulations or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other

affected development from flood damages, implementing the enforcement provisions of the chapter, or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

**START OF CONSTRUCTION.** (For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348, being generally 16 USC 3501 et seq.)), includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparations such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

**STRUCTURE.** A walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of **SUBSTANTIAL IMPROVEMENT**.

**SUBSTANTIAL IMPROVEMENT.** Any repair, reconstruction, or improvement of a structure, within any 12 month period, where the cost equals or exceeds 50 percent of the market value of the structure, either: before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, **SUBSTANTIAL IMPROVEMENT** is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: any project for improvement of a structure to comply with existing state and local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**SUBSTANTIALLY IMPROVED EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** Where the repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads equals or exceeds 50 percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement commenced.

**VARIANCE.** A grant of relief to a person from the requirements of this chapter which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

**VIOLATION.** The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §§ 155.30 through 155.33 and §§ 155.50 through 155.53 is presumed to be in violation until such time as that documentation is provided.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

**§ 155.02 STATUTORY AUTHORIZATION.**

The Legislature of the state of North Carolina has in G.S. Chapter 143, Article 21, Part 6; G.S. Chapter 153A, Article 6; Chapter 160A, Article 8; G.S. Chapter 160D, Articles 7, 9 and 11; and G.S. §§ 153A-121 through 153A-123, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the County Board of Commissioners of the county does ordain this chapter.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91; Am. Ord. passed 7-19-21)

**§ 155.03 FINDINGS OF FACT.**

(A) The flood hazard areas of the county are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in flood plains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

**§ 155.04 STATEMENT OF PURPOSE.**

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(A) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural flood plains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;

(D) Control filling, grading, dredging, and other development which may increase erosion or flood damage; and,

(E) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.  
(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

#### **§ 155.05 OBJECTIVES.**

The objectives of this chapter are:

(A) To protect human life and health;

(B) To minimize expenditure of public money for costly flood control projects;

(C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) To minimize prolonged business interruptions;

(E) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges located in flood plains;

(F) To help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize flood blight areas; and,

(G) To insure that potential home buyers are notified that property is in a flood area.  
(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

#### **§ 155.06 LANDS TO WHICH CHAPTER APPLIES.**

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the county. Jurisdiction shall include all lands outside municipal corporate limits and their extraterritorial jurisdiction, as well as areas within municipal corporate limits and their extraterritorial jurisdiction where by Joint Resolution, jurisdiction to enforce the ordinance has been relinquished and granted to the County pursuant to relevant provisions of G.S. §160A-360.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91; Am. Ord. passed 4-3-06)

**§ 155.07 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.**

The areas of special flood hazard identified by the Federal Emergency Management Agency in its flood insurance rate study, dated July 16, 1984, with accompanying maps and other supporting data, and any revision thereto are adopted by reference and declared to be a part of this chapter. (Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

**§ 155.08 ESTABLISHMENT OF DEVELOPMENT PERMIT.**

A development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities.  
(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

**§ 155.09 COMPLIANCE.**

No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this chapter and other applicable regulations.  
(Ord. passed 8-7-87; Am. Ord. passed 3-21-91) Penalty, see § 155.99

**§ 155.10 ABROGATION AND GREATER RESTRICTIONS.**

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.  
(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

**§ 155.11 INTERPRETATION.**

In the interpretation and application of this chapter all provisions shall be:

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

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

**§ 155.12 WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the county or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.  
(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

***FLOOD HAZARD REDUCTION*****§155.30 GENERAL STANDARDS.**

In all areas of special flood hazard the following provisions are required:

- (A) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;
- (B) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (C) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (D) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (G) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding; and,
- (H) Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with the provisions of this chapter shall meet the requirements of new construction as contained in this chapter.

(I) Non-conforming buildings or uses may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this chapter. Provided, however nothing in this chapter shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this chapter and located totally or partially within the Floodway Zone, provided that the bulk of the building or structure below base flood elevation in the Floodway Zone is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this chapter.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91) Penalty, see § 155.99

### § 155.31 SPECIFIC STANDARDS.

In all areas of special flood hazard where base flood elevation data has been provided, as set forth in § 155.07, or § 155.50(B)(10), the following provisions are required:

(A) *Residential construction.* New construction or substantial improvements of any residential structure shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided.

(B) *Non-residential construction.* New construction or substantial improvement of any commercial, industrial, or non-residential structure shall have the lowest floor, including basement, elevated no lower than one foot above the level of the base flood elevation. Structures located in A-zones may be flood-proofed in lieu of elevation provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this division are satisfied. Such certification shall be provided to the official as set forth in §155.51(E).

(C) *Manufactured homes.*

(1) Manufactured homes that are placed or substantially improved on sites outside a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or, in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated no lower than one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(2) Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of § 155.31(C)(1) of this chapter must be elevated so that the lowest floor of the manufactured home is elevated no lower than one foot above the base flood elevation, and be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement.

**Haywood County – Land Usage**

(3) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse, or lateral movement in accordance with the *Regulations for Mobile Homes and Modular Housing* adopted by the Commissioner of Insurance pursuant to G.S. § 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis at least 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

(4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved, or substantially damaged manufactured home parks or subdivisions located within flood-prone areas. This plan shall be filed with and approved by the local administrator and the local Emergency Management Coordinator.

(D) *Recreational vehicles.* A recreational vehicle is ready for highway use if it is on wheels or a jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions. Recreation vehicles placed on sites shall either:

(1) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use; or

(2) Meet the requirements of §§ 155.51, 155.30, and 155.31(C).

(E) *Elevated buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

(1) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

(a) Provide a minimum of two openings having a total net area of not less than one square-inch for every square foot of enclosed area subject to flooding;

(b) The bottom of all openings shall be no higher than one foot above grade; and,

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(2) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

(4) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

(F) *Temporary structures.* Prior to the issuance of a development permit for a temporary structure, the following requirements must be met:

(1) All applicants must submit to the local administrator a plan for the removal of such structure(s) in the event of a hurricane or flash flood notification. The plan must include the following information:

(a) The name, address, and phone number of the individual responsible for the removal of the temporary structure;

(b) The time frame prior to the event at which a structure will be removed;

(c) A copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and

(d) Designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.

(2) The above information shall be submitted in writing to the local administrator for review and written approval.

(G) *Accessory structure.* When accessory structures (sheds, detached garages, and the like) with a value of \$3,000 or less, are to be placed in the floodplain the following criteria shall be met:

(1) Accessory structures shall not be used for human habitation;

(2) Accessory structures shall be designed to have low flood damage potential;

(3) Accessory structures shall be firmly anchored in accordance with § 155.30(A); and

(4) Service facilities such as electrical and heating equipment shall be elevated in accordance with § 155.30(D).

(H) *Floodways.* Located within areas of special flood hazard established in § 155.07, are areas designated as floodways. The floodway is an extremely hazardous area, due to the velocity of flood waters which carry debris and potential projectiles, and has erosion potential. The following provisions shall apply within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless certification (with supporting technical data) by a registered

professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.

(2) If § 155.31(H)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §§ 155.30 through 155.33.

(3) No manufactured homes shall be permitted, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of § 155.30(B) and the elevation standards of § 155.31(A) are met.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91) Penalty, see § 155.99

### **§ 155.32 STANDARDS FOR STREAMS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS AND/OR FLOODWAYS.**

Located within the areas of special flood hazard streams established in § 155.07 are small streams where no base flood data has been provided or where no floodways have been identified. The following provisions apply within such areas:

(A) No encroachments, including fill, new construction, substantial improvements, or new development shall be permitted within a distance of the stream bank equal to 20 feet each side from top of bank unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(B) If § 155.32(A) is satisfied and base flood elevation data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable flood hazard chapter provisions of §§ 155.30 through 155.33 and shall be elevated or flood-proofed in accordance with elevations established in accordance with §155.50(B)(10). When base flood elevation data is not available from a federal, state, or other source, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91) Penalty, see § 155.99

### **§ 155.33 STANDARDS FOR SUBDIVISION PROPOSALS.**

(A) All subdivision proposals shall be consistent with the need to minimize flood damage;

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and,

(D) In unnumbered A zones, when the base flood elevation data has not been determined, and when the development is greater than 50 lots or five acres, then the developer is responsible for providing 100 year flood elevation data.

(E) No recreational vehicle subdivisions shall be permitted in flood hazard areas. (Ord. passed 8-7-87; Am. Ord. passed 3-21-91) Penalty, see § 155.99

***ADMINISTRATION AND ENFORCEMENT***

**§ 155.50 DESIGNATION OF LOCAL ADMINISTRATOR; DUTIES AND RESPONSIBILITIES.**

(A) The County Planner is appointed to administer and implement the provisions of this chapter and shall be sometimes referred to herein as the ***LOCAL ADMINISTRATOR*** or the ***ADMINISTRATOR***.

(B) Duties of the County Planner shall include, but not be limited to:

(1) Review all development permits to assure that the permit requirements of this chapter have been satisfied;

(2) Advise permittee that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of the permits be provided and maintained on file with the development permit.

(3) Notify adjacent communities and the State Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of the notification to the Federal Emergency Management Agency.

(4) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished.

(5) Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of § 155.30 through 155.33 are met.

(6) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, in accordance with §155.51(E).

(7) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood-proofed, in accordance with § 155.51(E).

(8) When flood-proofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with § 155.31(B).

(9) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this chapter.

(10) When base flood elevation data or floodway data has not been provided in accordance with § 155.07, obtain, review, and reasonably utilize any base flood elevation data and floodway data developed pursuant to § 155.33(D), in order to administer the provisions of this chapter.

(11) Make on-site inspections of projects in accordance with § 155.52.

(12) Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with § 155.52.

(13) All records pertaining to the provisions of this chapter shall be maintained in the office of the local administrator and shall be open for public inspection.

(14) Provide the State Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program with two copies of the maps delineating new corporate limits within six months from date of annexation or change in corporate boundaries.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

#### **§ 155.51 DEVELOPMENT PERMIT AND CERTIFICATION REQUIREMENTS.**

(A) Application for a development permit shall be made to the local administrator on forms furnished by him or her prior to any development activities. The development permit may include, but not be limited to plans in duplicate drawn to scale showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; and the location of fill, materials storage areas, and drainage facilities. Specifically the information in divisions (B) through (F) of this section is required.

(B) Where base flood elevation data is provided in accordance with § 155.50(B)(10), the application for a development permit within the Zone A on the flood insurance rate map shall show:

(1) The elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and

(2) If the structure has been floodproofed in accordance with § 155.31(B), the elevation (in relation to mean sea level) to which the structure was floodproofed.

(C) Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor at least two feet above the highest adjacent grade.

(D) Where any watercourse will be altered or relocated as a result of proposed development, the application for a development permit shall include: a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation.

(E) When a structure is floodproofed, the applicant shall provide a certificate from a registered professional engineer or architect that the nonresidential flood-proofed structure meets the flood-proofing criteria in § 155.31(B).

(F) A floor elevation or flood-proofing certification is required after the lowest floor is completed. Within 21 calendar days of establishment of the lowest floor elevation, or flood-proofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the local administrator a certification of the elevation of the lowest floor, or floodproofed elevation, whichever is applicable, as built, in relation to mean sea level. The certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by the same. Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The local administrator shall review the floor elevation survey data submitted. Deficiencies detected by the review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required shall be cause to issue a stop-work order for the project.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

**§ 155.52 ADMINISTRATIVE PROCEDURES.**

(A) *Inspections of work in progress.* As the work pursuant to a permit progresses, the local administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local chapter and the terms of the permit. In exercising this power, the Administrator has a right, upon presentation of proper credentials, to enter any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.

(B) *Stop orders.* Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this chapter, the administrator may order the work to be immediately stopped. The stop order shall be in writing and directed to the person doing the work. The stop order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop order constitutes a misdemeanor. Violation of a stop order subjects the violator to the civil enforcement provisions of N.C.G.S. § 153A-123.

(C) *Revocation of permits.* The local administrator may revoke and require the return of the development 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 state or local laws, or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(D) *Periodic inspections.* The local administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials to enter any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(E) *Violations to be corrected.* When the local 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 each immediately remedy the violations of law in the property he or she owns.

(F) *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 administrator shall give him or her written notice, by certified or registered mail to his or her last known address or by personal service, that:

(1) The building or property is in violation of the Flood Damage Prevention ordinance;

(2) A hearing will be held before the local 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,

(3) Following the hearing, the local administrator may issue such order to alter, vacate, or demolish the building or to remove fill as appears appropriate.

(G) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the administrator shall find that the building or development is in violation of the Flood Damage Prevention ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation, within such period as the administrator determines to be feasible, but not less than 60 days; provided that where the administrator finds that there is imminent danger to life or property, he or she may order that corrective action be taken in such lesser period as may be feasible.

(H) *Appeal.* Any owner who has received an order to take corrective action may appeal from the order to the Board of Commissioners by giving notice of appeal in writing to the administrator and the clerk within ten days following issuance of the final order. The appeal shall be conducted as a quasi-judicial proceeding in accordance with G.S. 160D-406 *et seq.* In the absence of an appeal, the order of the administrator shall be final. The Board of Commissioners shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

~~(H) —~~ *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he or she shall be ~~guilty of a misdemeanor and shall be punished in the discretion of the court.~~ Subject to the civil remedies of N.C.G.S. § 153A-123.

(J) *Conflict of interest of local administrator.* The local administrator shall be governed by the conflict-of-interest provisions of G.S. 160D-109(c).

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91; Am. Ord. passed 7-19-21)

**§155.53 VARIANCE PROCEDURES.**

(A) The County Board of Commissioners as established by the county shall hear and decide appeals and requests for variances from the requirements of this chapter.

The County Commissioners shall be governed by the conflict-of-interest provisions of G.S. 160D-109(a).

(B) Any person aggrieved by the decision of the County Board of Commissioners or any taxpayer may appeal the decision to the Superior Court of Haywood County, as provided in G.S. 160D-406(k).

(C) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section.

(D) In passing upon such applications, the County Board of Commissioners shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

(11) The costs of providing the 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.

(E) Upon consideration of the factors listed above and the purposes of this chapter, the Board of Commissioners may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(F) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(G) Conditions for variances.

(1) Variances may not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

(2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(3) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship; and,

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud upon or victimization of the public, or conflict with existing local laws or ordinances.

(4) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk

resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.

(5) The local administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.  
(Ord. passed 8-7-87; Am. Ord. passed 3-21-91; Am. Ord. passed 7-19-21)

**§ 155.99 PENALTY.**

~~Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 3 misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50 or imprisoned for not more than 30 days, or both. This ordinance may be enforced by any of the civil provisions of N.C.G.S. § 153A-123. Each day's the violation of the ordinance constitutes a separate continues shall be considered a separate offense.~~ Nothing herein contained shall prevent the county from taking such other lawful action as is necessary to prevent or remedy any violation.  
(Ord. passed 8-7-87; Am. Ord. passed 3-21-91; Am. Ord. 1-3-22)

**§ 155.100 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 155 originally adopted August 7, 1987, and all subsequent amendments, and shall be effective on and after January 3, 2022~~July 19, 2021~~.

**CHAPTER 160: HIGH IMPACT DEVELOPMENT**  
**GENERAL PROVISIONS**

**Chapter 160**

**Table of Contents**

§160.01 Title  
§160.02 Authority and Jurisdiction  
§160.03 Purpose – Protection of Vulnerable Populations  
§160.04 Applicability  
§160.05 Interpretations and Definitions  
§160.06 Locational, Screening and Mitigation Requirements  
§160.07 Specifications for Separations, Setbacks and Buffers  
§160.08 Application to Existing Nonconforming High Impact  
Development Uses  
§160.09 Inspections  
§160.10 Permit Required  
§160.11 Appeal from a decision of the Ordinance  
Administrator  
§160.12 Request for Variance  
§160.13 Penalties, Remedies and Enforcement  
§160.14 Severability  
§160.15 Effective Date and Revision of Original Ordinance

**§ 160.01 TITLE.**

This Chapter shall be known and may be cited as High Impact Development, codified as Chapter 160 of the Haywood County Code of Ordinances.

**§ 160.02 AUTHORITY AND JURISDICTION.**

(A) This Chapter is established by the Haywood County Board of Commissioners pursuant to the authority conferred in N.C.G.S. §153A-121, 160D-201 and §160D-202 and -903.

(B) The provisions of this Chapter shall apply to all unincorporated areas of Haywood County lying outside of the corporate limits and the extraterritorial jurisdictions of any municipality.

(Ord. passed 9-19-16; Am. Ord. passed 7-19-21)

**§ 160.03 PURPOSE – PROTECTION OF VULNERABLE POPULATIONS.**

This Chapter hereby acknowledges that high impact development within Haywood County has important, positive economic benefits to the citizens of the County. The County also recognizes that, at times, certain conditions associated with high impact activity can have adverse effects upon the health and well-being of vulnerable populations of people in close proximity. There are populations within certain facilities in Haywood County who have limited mobility, or complicated or difficult evacuation options, or

limited ability to help themselves during times of emergency or evacuation; be it children in schools or care facilities, the sick, the elderly, the mentally challenged, or the incarcerated.

It is the simple intent of this Chapter to implement limited, reasonable protection standards for minimum high impact hazards and activities named herein. The desired outcome is that higher factors of safety may be in place for vulnerable citizens in any of the following entities:

- 1- Public and private schools,
- 2- Child care institutions/facilities,
- 3- Day care centers,
- 4- Hospitals,
- 5- Nursing care homes,
- 6- Retirement and assisted living facilities,
- 7- Correctional institutions (Ex. Jail or Prison).

#### **§ 160.04 APPLICABILITY.**

(A) The provisions of this Chapter shall apply to the following uses of any land as further defined in § 160.05(B) of this Chapter:

- (1) Asphalt Plants; and,
- (2) Chemical Facility
  - Class I,
  - Class II; and,
- (3) Explosives Facility
  - Class I,
  - Class II; and,
- (4) Mining, Quarrying, or Resource Extraction; and,
- (5) Hazardous Waste Facilities
  - Class I,
  - Class II; and,
- (6) Landfills; and,
- (7) Combustible and Flammable Bulk Fuel Facilities
  - Class I,
  - Class II.

(B) The provisions of this Chapter shall not apply to any use of land arising out of or associated with *bona fide* agricultural or forestry operations as defined in G. S. § 106-701.

#### **§ 160.05 INTERPRETATIONS AND DEFINITIONS.**

(A) For the purposes of this Ordinance, certain words shall be defined or interpreted as follows:

- (1) The word “County” shall mean Haywood County, North Carolina.

(2) The words “County Commissioners” shall mean the Board of Commissioners of Haywood County, North Carolina.

(3) The word “Ordinance” or “Chapter” shall mean CHAPTER 160 of the Haywood County Code of Ordinances.

(4) Words used in the singular in this Ordinance include the plural and words used in the plural include the singular.

(5) Words used in the present tense include future tense.

(6) The word “person” includes a firm, association, organization, corporation, company, trust, and partnership as well as an individual.

(7) The words “used” or “occupied” shall mean “intended, designed, and arranged to be used by or is used/occupied by persons.”

(8) The word “lot” shall include the words “plot,” “parcel,” “site,” “acreage,” “tract,” and “premises.”

(9) The word “structure” shall include the word “building.”

(10) The word “includes” shall not limit the term to specified examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(B) The following words shall be specifically defined as follows:

**Accessory Structure** - means a structure located on the same parcel of property as the principal structure and the use supports the principal structure. Garages, carports and storage sheds are common accessory structures.

**Asphalt Plant** – The equipment and facility necessary to produce petroleum bitumen products.

**Buffer** – A strip of land or an area of separation between properties or land uses measured from different property boundaries, different property uses, or surface waters.

**Class 1 Chemical Facility** – An establishment, business, or facility whose primary purpose is retail sales of chemical products in forms or states of matter that are hazardous, per “Emergency Planning and Community Right to Know Act (EPCRA) (42 U.S.C. § 11022 et. seq)”

**Class 2 Chemical Facility** - An establishment, business, or facility whose primary purpose may include wholesale transactions, transferring, production, synthesis,

formation, processing, refining, manufacturing, distribution, and/or storage of chemical products in forms or states of matter that are hazardous, per “Emergency Planning and Community Right to Know Act (EPCRA) (42 U.S.C. § 11022 et. seq)”

**Commercial** – Use for an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.

**Class I Combustible and Flammable Bulk Fuel Storage Facility** – An establishment, business, or facility such as a service station or convenience store whose purpose in storing combustible and flammable fuel in quantity less than 50,000 gallons is for small-quantity retail sales of fuel to the public. Examples of small-quantity sales would include purchases such as a tank of gasoline for an automobile; or a propane tank exchange, or propane tank filling options for a family camper or a BBQ grill.

**Class II Combustible and Flammable Bulk Fuel Storage Facility** – A facility whose purpose is the storage, distribution, mixing, or transfer of combustible liquids, gases, or solids, received or transferred by truck, train, tank vessel, pipelines, tank car, piping, portable tank or containers, or other methods that include, but are not limited to propane, methane, and/or other combustible or flammable fuels. A facility in this class primarily sells, transfers, or stores large quantities of fuel for wholesale distribution; or may sell truckload quantities of home heating fuel. This definition shall not include fuel stored at or on a residence, business, or other facility where use of the same is limited to on-site consumption.

**Class 1 Explosives Facility** - An establishment, business, or facility primarily engaged in retail sales of pre-manufactured or pre-packaged explosives.

**Class 2 Explosives Facility** – An establishment, business, or facility used in the manufacturing, transferring, or storage of any chemical compounds, mixtures, or devices in which the primary or common purpose is to explode. This definition includes but is not limited to dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniting cord, igniters, and display fireworks, but does not include hand-loaded small arms ammunition.

**Development Permit** – A permit issued by the Ordinance Administrator authorizing the construction of a new entity or facility listed in section 160.03 or section 160.04 or any modification to a pre-existing entity or facility.

**Hazardous Waste (NC General Statutes, Chapter 130A Article 9, § 130A-290(a)(8))** - "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

- a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- b. Pose a substantial present or potential hazard to human health or the

environment when improperly treated, stored, transported, disposed of or otherwise managed.

**Class 1 Hazardous Waste Facility** – A facility designed for collection of and or *temporary* storage of hazardous waste.

**Class 2 Hazardous Waste Facility** – A facility designed for processing, recovery, treatment, refining, production of and/or disposal of hazardous waste.

**High Impact** – A use listed in § 160.04 (A) of this Ordinance.

**Landfill** - (NC General Statutes, Chapter 130A Article 9, § 130A-290(a)(16) – "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility. This definition does not include recycling facilities.

**Mining, Quarrying, or Resource Extraction** – Any activity that may include dredging, digging, extraction, mining, or quarrying of earth materials including stones, minerals, ores, sand, or soils for commercial purposes. This definition shall not include excavation or grading when conducted solely in aid of on-site construction for purposes other than mining. This definition shall not include “gem” or other mining generally operated as a business use for the general public. This definition shall not include the removal of fieldstone for commercial, construction, masonry or private use.

**Ordinance Administrator** – An individual or group of individuals designated by the Haywood County Board of Commissioners and charged with upholding the provisions of this chapter, and having the power to enter all lands at reasonable times to insure that these provisions are being carried out.

**Perennial Stream** - A constantly flowing, drought-resistant stream that is typically depicted by a thin continuous blue line on the most recent version of the USGS 1:24,000 (7.5 minute) scale topographic maps (or as determined by local government studies; or studies including determinations or classifications made by the State of North Carolina, the United States Army Corps of Engineers or other controlling authorities acceptable to the County).

**Principal Use** - The primary purpose for which land, buildings or other improvements is/are arranged, designed, intended or used, including the storage or use of supplies, inventory, materials, equipment or products associated therewith.

**Private School** - A school operated by a private, non-governmental entity. A private school provides a facility (campus) and curriculum similar to public schools.

**Public School** – A non-commercial, elementary, secondary, or post secondary school that is supported by public funds, that is guided by local, state, and federal

government policies and procedures, and that provides free education for children of a community or district.

**Screening** – The use of any device or natural growth including but not limited to fencing, walls, berms, vegetation, or any combination thereof that serves as a barrier of vision between adjoining properties. Screening may be partial or full as may be required by this Chapter.

**Separation** – Where separation restrictions are required, no portion of the active area on which the regulated use is located shall be situated within the stated distance from the protected use(s) whether such protected uses(s) are located within or outside Haywood County.

**Setback** - A continuous strip of land, or an area of land, or a specific minimum distance measured from defined, identifiable places such as property lines, streets, watercourses, or lakes that border or traverse the property (whichever is closer to the active area, principal use or building) in which no principal use is permitted. Limited development, including buffers and related development, parking lots and accessory structures and buildings, access road corridors, and interior service roads, may occur within the setback

#### **§ 160.06 LOCATIONAL, SCREENING AND MITIGATION REQUIREMENTS.**

No high impact development, as defined herein, of a parcel or parcels of land shall be permitted, constructed, operated, or maintained except in accordance with the following standards:

(A) Separation. The location of the closest point of a principle use, active area, building, structure or outdoor storage of a high impact development use shall be the minimum distance specified in § 160.07 of this Chapter from the nearest property line for any existing;

- 1- Public and private school,
- 2- Child care institution/facilities,
- 3- Day care center,
- 4- Hospital,
- 5- Nursing care home,
- 6- Retirement facility or assisted living institution,
- 7- Correctional Institution (Ex. Jail or Prison),

In order to establish permitted locations, the separation measurement shall be made in a straight line from the closest or nearest portion of the building, structure, outdoor storage, principle use, or active area of the high impact development to the nearest property line of the premises of the above listed protected facilities. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the spacing requirements of this Section.

(1) Reciprocal separation requirement. In the event that a protected entity chooses to establish a new location of operation which is within the controlled proximity of a pre-existing, regulated entity, then, the proposed, protected entity shall comply with the full separation distance requirements stated within §160.07 of this Chapter; and the full separation distance shall be upon the tract of the proposed, protected entity and not upon the pre-existing, regulated entity.

(B) Vegetative Buffer. A continuous vegetative buffer shall be maintained

along any property line of a high impact development use which is adjacent to a public right-of-way or adjacent to property on which is located a public or private school, child care institution/facilities, day care center, hospital, nursing care home, retirement facility or assisted living institution or correctional facility. The vegetative buffer strip shall not be less than twenty five feet in width at a reasonable maturity and shall be composed of evergreen trees or shrubs approved by the Ordinance Administrator and which are of a type that at planting shall be a minimum of five feet in height and which at maturity shall not be less than ten feet in height.

(C) The buffer strip should consist of three rows of evergreen trees or shrubs

planted in a staggered pattern. In each row the trees or shrubs should be spaced no more than ten feet apart (from base of tree to base of tree) and the rows should be no more than five feet apart or of a width appropriate for maturity of an approved species. Alternative spacing of trees or shrubs is acceptable to improve the growth of vegetation so long as the buffer strip is a minimum of twenty five feet in width and the density of the buffer is sufficient to provide adequate screening.

(D) Plans for buffering shall be provided with the permit application.  
Plants

required in the buffer shall be carefully planted and shall be maintained in effective condition. Failure to maintain the buffer in reasonable, effective condition shall constitute a violation of this Ordinance. This planting requirement may be modified by the Ordinance Administrator where adequate buffering exists in the form of natural vegetation and or terrain.

(E) Stream Buffer. The closest point of building, structure, or outdoor storage of a high impact development use shall be set back from all surface waters, the minimum distance specified in § 160.07 of this Chapter, or at a minimum, stream buffers as mandated by the State of North Carolina for the classified body.

(F) Principal Use Setback. All buildings, structures, or other improvements constituting the principal use for any high impact development shall be set back from the property lines the minimum distances specified in § 160.07 of this Chapter.

(G) Screening. All high impact development uses shall be effectively screened. The screening may be located within any required buffer or setback. The screening may consist of the required continuous vegetative buffer described in subsection (C) of this section or, upon approval of the Ordinance Administrator, a combination of the vegetative buffer, opaque wooden fences, masonry walls, or landscaped earthen berms that are approved for use.

(H) Setback Uses. Any legal, permitted (excluding the regulated entities herein) use may be located within the building setbacks of any high impact development use located on the same parcel of land.

(I) Safety Fencing. Safety fencing shall be installed around the principal use or building containing the principal use of all regulated uses as listed in 160.04 (A). The safety fencing shall be chain link or equivalent, at least six feet in height, and gated in order that it can be secured at any time.

### **§ 160.07 SPECIFICATIONS FOR SEPARATIONS, SETBACKS AND BUFFERS.**

Specifications for the separation distances prescribed in § 160.06(A), the stream setbacks prescribed in § 160.06(D), the principal use setbacks prescribed in § 160.06(E), and the buffer widths prescribed in § 160.06(F) for each high impact development use are set forth in the following table (Stream buffers required by the State of North Carolina are given in the NCGS regulations and the NCAC rules.):

<b><u>Regulated Entity</u></b>	<b><u>Separation</u></b>	<b><u>Setback</u></b>	<b><u>Buffer (Live H<sub>2</sub>O)</u></b>	<b><u>Fencing/ Screening</u></b>
<b>1) Chemical Facility</b>				
<b>Class I</b>	250	25	50	NO
<b>Class II</b>	1000	250	100	YES
<b>2) Asphalt Plants</b>	<b>750</b>	<b>100</b>	<b>100</b>	<b>YES</b>
<b>3) Explosives</b>				
<b>Class I</b>	250	25	50	<b>NO</b>
<b>Class II</b>	1000	200	100	<b>YES</b>
<b>4) Mining/Extraction Operations/Quarries</b>	1000	<b>100</b>	100	<b>YES</b>
<b>5) Hazardous Waste</b>				
<b>Class I</b>	<b>250</b>	<b>25</b>	<b>50</b>	<b>YES</b>
<b>Class II</b>	<b>1000</b>	<b>250</b>	<b>200</b>	<b>YES</b>
<b>6) Landfills</b>	<b>1000</b>	200	100	<b>YES</b>
<b>7) Combustible and Flammable Bulk Fuel storage</b>				
<b>Class I-</b>	<b>50</b>	<b>25</b>	<b>50</b>	<b>NO</b>
<b>Class II</b>	<b>1000</b>	<b>200</b>	<b>100</b>	<b>YES</b>

**§ 160.08 APPLICATION TO EXISTING NONCONFORMING HIGH IMPACT DEVELOPMENT USES.**

(A) Any high impact development use identified in this Chapter that is legally in existence on the effective date of this Chapter, which does not conform to the requirements of this Chapter, is declared non-conforming.

(B) Any non-conforming high impact development use as described above may continue so long as the use is not discontinued. In cases where repair or renovation is necessary to re-occupy a building that is part of a regulated entity, such construction must commence immediately and proceed continuously to completion and re-use.

(C) Expansion of nonconforming, high impact development uses shall comply with the standards set forth in this Ordinance.

In the event that there is no protected entity within the control distances required by this Ordinance, with the written permission of the Ordinance Administrator, the following allowances may apply: A Class I Chemical Facility, or a Class 1 Explosives Facility, or a Class I Hazardous Waste facility, or a Class I Combustible and Flammable Bulk Fuel Storage facility (underground storage only) may encroach upon the required setback distances by up to 20% (twenty percent).

In the event that a protected entity exists at the time of a proposed expansion of a regulated entity, with the written permission of the Ordinance Administrator, the following allowances may apply: A Class I Chemical Facility, or a Class 1 Explosives Facility, or a Class I Hazardous Waste facility, or a Class I Combustible and Flammable Bulk Fuel Storage facility (underground storage only) may encroach upon the required separation distances by up to 50% (fifty percent).

Vertical expansions are not allowed without written approval of the Ordinance Administrator.

(D) In cases of damage to nonconforming buildings to the extent of seventy five percent (75%) or less of the replacement value, repairs may be made, provided the original foundation footprint is maintained. If such damage exceeds seventy five percent (75%) of the replacement value, repairs may be made only if the original foundation footprint is maintained and the standards of this Ordinance are met to the extent approved by the Ordinance Administrator.

(E) Compliance with a requirement of this Ordinance is not physically practicable if compliance cannot be achieved without adding additional land to the lot where the nonconforming high impact development use is maintained or requires the movement of a substantial structure that is on a permanent foundation. Financial hardship caused by the cost of meeting requirements does not constitute grounds for finding that compliance is not practicable. However, in such instances, consideration will be given by the County to the regulated entity in order that hardships may be mitigated; this in the effort of balance and fairness; and, if there are no objectionable secondary consequences.

**§ 160.09 INSPECTIONS.**

(A) The Ordinance Administrator may periodically inspect the development activities subject to the requirements of this Chapter and shall request, from the applicant, permission to inspect the high impact development during construction and thereafter.

(B) If voluntary entry is denied, the Ordinance Administrator may seek any legal means to inspect the high impact development.

(C) The Ordinance Administrator shall be responsible for all inspections, plan review and approval, enforcement, and other responsibilities as outlined in this Chapter.

**§ 160.10 PERMIT REQUIRED.**

(A) All new high impact development uses and any nonconforming high impact development uses which are moved, altered or enlarged shall conform to the provisions contained in this Chapter.

(B) No building, establishment, business, facility, or other structure subject to this Ordinance shall be erected, moved, or altered without a Development Permit. No building permit shall be issued except in conformity with the provisions of this Chapter.

(C) Development Permit applications shall include site plans. A site development plan shall be prepared and shall contain the following information:

(1) The name, address and telephone number of the applicant and the property owner, tax parcel identification number, scale, north arrow, a copy of the section of the 1:24,000 USGS quadrangle showing the proposed site.

(2) The name, address, telephone number, signature and seal of the professional preparing the site development plan.

(3) All structures and surface waters located on the parcel, all private and public roads.

(4) Surveyed boundary lines of the parcel.

(5) Description of adjacent land use and all property owner names, tax parcel numbers and mailing addresses.

(6) To scale sizes and locations on the lot of any buildings already existing and location of all proposed buildings or alterations.

(7) Existing and proposed uses of the buildings and land.

(8) Any additional information requested by the Ordinance Administrator.

(D) The failure to obtain any Development Permit required by this ordinance shall be a violation of this Chapter.

**§ 160.11 APPEAL FROM A DECISION OF THE ORDINANCE ADMINISTRATOR.**

(A) Any order, requirement, decision or determination made by the Ordinance Administrator may be appealed to and decided by the Haywood County Planning Board, in accordance with the provisions of N.C.G.S. 160D-405.

(B) Notice of an appeal to the Planning Board shall be in writing, shall state the grounds for the appeal with specificity, and shall be submitted to the Ordinance Administrator within thirty days of the receipt of the written order, requirement, decision, or determination.

(C) The Ordinance Administrator shall schedule the appeal at the next regularly scheduled meeting of the Haywood County Planning Board and give notice thereof to the parties. The Planning Board shall conduct its proceedings in accordance with N.C.G.S. 160D-406. The Planning Board shall give written notice of its decision to the Ordinance Administrator and to the applicant for a Development Permit. Appeals from the Planning Board decision shall be made to the Board of Commissioners and Superior Court, in accordance with N.C. G.S. 160D-406.

(Ord. passed 9-19-16; Am. Ord. passed 7-19-21)

**§ 160.12 REQUEST FOR VARIANCE.**

Refer to variance procedure

**§ 160.13 PENALTIES, REMEDIES AND ENFORCEMENT.**

(A) ~~The A violation of any of the~~ provisions of this Chapter ~~shall be a misdemeanor subject to the penalties and enforcement provisions of~~ may be enforced by any of the civil remedies authorized by G.S. § 153A-123.

(B) Each day's continuing violation of any of the provisions of this Chapter shall constitute a separate and distinct violation.

~~(C) The provisions of this Chapter may be enforced by any one or more of the remedies authorized by G.S. § 153A-123.~~  
(Ord. passed 9-19-16; Am. Ord. passed 1-3-22)

**§ 160.14 SEVERABILITY.**

If any section or sections of this Chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

**§ 160.15 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 160 originally adopted September 19, 2016, and all subsequent amendments, and shall be effective on and after January 3, 2022~~July 19, 2021~~.

## **Chapter 161: COMMERCIAL OUTDOOR SPORT SHOOTING RANGES**

### **Chapter 161            Table of Contents**

- §161.01 Title
- §161.02 Authority and Jurisdiction
- §161.03 Purpose
- §161.04 Interpretations and Definitions
- §161.05 Intent
- §161.06 Performance Standards
- §161.07 Development Requirements
- §161.08 Operational Requirements
- §161.09 Permit Required for New Ranges and Facilities
- §161.10 Documentation and Compliance of Existing Ranges
- §161.11 Variances
- §161.12 Inspections
- §161.13 Penalties, Remedies, and Enforcement
- §161.14 Severability
- §161.15 Effective Date

#### **§161.01 Title.**

This chapter shall be known as and may be cited as Commercial Outdoor Sport Shooting Ranges codified as Chapter 161 of the Haywood County Code of Ordinances.

#### **§161.02 Authority and Jurisdiction.**

(A) This Chapter is established by the Haywood County Board of Commissioners pursuant to the authority conferred in N.C.G.S. 153A-121.

(B) The provisions of this Chapter shall apply to all unincorporated areas of Haywood County lying outside of the corporate limits and the extraterritorial jurisdiction of any municipality.

#### **§161.03 Purpose.**

This Ordinance is intended to regulate the design, construction, and operation of commercial outdoor sport shooting ranges and facilities as defined herein. Such recreational and training complexes, due to their potential noise impacts and safety concerns, merit careful review to minimize potential adverse effects on the health, safety, and general welfare of persons and properties. This Ordinance does not otherwise apply to the general discharge of firearms in accordance with all other applicable laws or regulations.

**§161.04. Interpretations and Definitions.**

(A) For the purposes of this Ordinance, certain words shall be defined or interpreted as follows:

- (1) The word “County” shall mean Haywood County, North Carolina.
- (2) The words “County Commissioners” shall mean the Board of Commissioners of Haywood County, North Carolina.
- (3) The word “Ordinance” or “Chapter” shall mean this Ordinance which is codified as CHAPTER 161 of the Haywood County Code of Ordinances.
- (4) Words used in the singular in this Ordinance include the plural, and words used in the plural include the singular.
- (5) Words used in the present tense include future tense.
- (6) The word “person” includes any firm, association, organization, corporation, company, trust, or partnership, as well as any individual or group of individuals.
- (7) The words “used” or “occupied” shall mean “intended, designed, or arranged to be used by or is used or occupied by a person or persons.”
- (8) The word “lot” shall include the words “plot,” “parcel,” “site,” “acreage,” “tract,” or “premises.”
- (9) The word “structure” shall include the word “building.”
- (10) The word “includes” shall not limit the term to specified examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(B) The following words shall be specifically defined as follows:

**Commercial:** A practice, act, or method of selling goods, products, uses, acts, or the use of a range or facility by one person to another person generally for a fee.

**dBA:** The sound pressure level, in decibels, as measured using the impulse mode and "A" weighting network on a precision sound level meter.

**Firearm:** A weapon, including but not limited to pistols, rifles, and shotguns, capable of firing any projectile and which uses an explosive charge as a propellant.

**Firing line:** A line parallel to a target from which firearms are discharged.

**Occupied Building:** A building that is used by any person at any time for the purpose of dwelling within, residing within, or living within, such as a family home. Occupied Building also means any building or structure used as a business office where proprietors, building owners, or persons in operational control conduct a commercial act or operate a business for services, uses, goods, or commerce with the public.

**Ordinance Administrator:** An individual or group of individuals designated by the Haywood County Manager and charged with upholding the provisions of this chapter, and having the power to use all lawful measures to ensure that these provisions are being carried out.

**Person:** Also means any individual, proprietorship, partnership, corporation, club, or other legal entity as defined in N.C.G.S. Article 53C § 14-409.45 (1).

**Range Officer:** A certified or otherwise credentialed person with the knowledge, skills, and abilities essential to organize, conduct, and supervise safe shooting activities and range operations and who is a minimum of 18 years of age.

**Safety fan:** An area on a shooting range designed to contain all projectiles fired from the shooting range.

**Surface Danger Zone:** The area that is designed to receive projectile impact resulting from direct fire, including misdirected and accidental discharges, and ricochets from any firearm which takes into consideration all mitigation efforts as submitted by the applicant and determined by a certified engineer.

**Sport Shooting Range:** An area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting, (N.C.G.S. Article 53C § 14-409.45 (2)). For the purpose of this Ordinance, a Commercial Sport Shooting Range may also be referred to as either a shooting range or a range.

**Shooting Range Facility:** A public or private facility, compound, or associated group of areas that are designed, constructed, or used by persons for the purpose of discharging various types of firearms, or any other shooting activity. This does not include:

- (1) Incidental target practice areas on private property.
- (2) Law enforcement or military firing ranges operated by any level of government that are inspected and certified by the State of North Carolina or federal government.
- (3) Occasional not-for-profit charitable events commonly called “turkey shoots”.
- (4) Supervised educational events sanctioned by Haywood Community College or the Board of Education.

Shooting Range Facilities include amenities, appurtenances, or supporting structures such as safety fans, shotfall zones, structures, parking areas, or other associated improvements. For the purpose of this Ordinance, a Shooting Range Facility may also be referred to as a facility.

**Shooting station:** A fixed point within a range from which firearms are discharged.

**Shotfall zone:** An area within which the shot or pellets contained in a shotgun shell typically fall.

**Structure:** A walled and roofed building that is principally above ground; a manufactured home or a mobile home; a storage tank for gases or liquids; or any other permanent, manmade facilities.

**Substantial change in use:** The current primary use of the range no longer represents the activity previously engaged in at the range, (N.C.G.S. Article 53C § 14-409.45 (3)).

**Target:** Any object or area which is used as the intended recipient of the projectiles fired from a firearm.

#### **§161.05 Intent.**

It is the intent of this Ordinance to accomplish the following:

- (A) *Permitting and compliance.* New ranges and facilities constructed on or after February 15, 2016, shall be designed, constructed and operated in accordance with a valid permit issued by Haywood County.
- (B) *Shot containment.* Each range shall be designed to contain the bullets, shot, and ricochets of same discharged on or within the range.
- (C) *Noise mitigation.* Each range shall be designed to minimize off-site noise impacts generated by the activities conducted on the range.

#### **§161.06 Performance Standards.**

The following performance standards shall apply to all ranges and facilities:

- (A) *Shot containment.* Shooting ranges shall be constructed so that the use of firearms will result in the safe containment of all the bullets, shot, or other projectiles discharged, as well as any other associated debris on the range.
- (B) *Noise mitigation.* Noise levels measured at any property line where the range or facility is located shall not exceed ninety (90) dBA.

## **161.07 Development Requirements.**

(A) *Minimum design requirements.* All shooting ranges and facilities shall be designed and constructed so that they will be safe to use. Persons responsible for implementing these requirements may consider guidelines used by any credible national association, federal agency, branch of the United States military, or state government having demonstrable safety standards for ranges and facilities that will meet the intent of this ordinance.

(B) *Setbacks.* Notwithstanding the performance standards of §161.06 the following setbacks shall apply.

- (1) All shooting stations and targets on a range shall be located a minimum of three hundred (300) feet from any property line; and, should an applicant seek to construct a facility with less stringent conditions than the requirements of this Ordinance related to distance locations from occupied buildings contained in §161.07(B), the applicant may seek relief from those requirements through an appeal to the Haywood County Planning Board. The appeal must contain a reasonable, alternative plan, and the appellant shall allow for adequate time for advance consideration and study of the alternative plan prior to the appeal being scheduled for the Planning Board agenda. The appeal must demonstrate that reasonable alternatives, techniques, or technologies will be installed that will best satisfy the requirements of §161.07(D) and §161.05(B) of this Ordinance. The alternative plan shall be designed by a licensed, qualified North Carolina engineer who must demonstrate the safety requirements of the alternative design.

The sound aspects of the alternative plan shall be designed by a licensed, qualified acoustics engineer who can successfully and accurately demonstrate the noise control elements of the alternative design such that persons at the property line would endure no more adverse impact than persons covered under the standard in §161.06(B). The Haywood County Planning Board shall approve, disapprove, or modify any alternative noise mitigation system prior to the facility being permitted for construction. The licensed, qualified acoustics engineer shall certify construction, function, and test records of as-built conditions prior to the issuance of a permit to operate. The Haywood County Planning Board shall approve, disapprove, or modify the alternative distance locations from occupied buildings prior to the facility being permitted for construction. The licensed, qualified safety engineer shall certify construction, function, and test records of as-built conditions prior to the issuance of a permit to operate.

- (2) The surface danger zone shall be contained within the boundary line of any shooting range.

(C) *Warning signs.* Warning signs for shooting ranges and facilities shall be posted at one hundred-foot intervals along the entire perimeter of the facility and along the entire perimeter of the property lines in the same intervals.

(D) *Distance from occupied building.* All shooting stations, targets, and firing lines shall be located at one thousand (1000) feet from any existing, occupied building; excepting any occupied building located on the same Parcel Identification Number as the permitted range or facility.

- (1) Should an applicant seek to construct a facility with less stringent conditions than the requirements of this Ordinance related to distance locations from occupied buildings contained in §161.07(D), the applicant may seek relief from those requirements through an appeal to the Haywood County Planning Board. The appeal must contain a reasonable, alternative plan, and the appellant must allow for adequate time for advance consideration and study of the alternative plan prior to the appeal being scheduled for the Planning Board agenda. The appeal must demonstrate that reasonable alternatives, techniques, or technologies are acceptable for technically accurate, appropriate, and safe reasons that will best satisfy the requirements of §161.07(D) and §161.05(B) of this Ordinance. The alternative plan safety aspects shall be designed by a licensed, qualified North Carolina safety engineer who must successfully and accurately demonstrate safe conditions of the alternative design.

The sound aspects of the alternative plan shall be designed by a licensed, qualified acoustics engineer who can successfully and accurately demonstrate conditions of the alternative design such that persons at the property line would endure no more impact than persons covered under the standard in 161.06(B). The Haywood County Planning Board shall approve, disapprove, or modify the alternative noise mitigation system prior to the facility being permitted for construction. The licensed, qualified acoustics engineer shall certify construction, function, and test records of as-built conditions prior to issuance of a permit to operate.

- (2) The setback requirements of §161.07(D) and the Performance Standards of §161.06(B) may be waived to the extent such requirements and standards would not be met upon a designated portion of a lot within the setback area. Such waiver must be accomplished by the execution and recordation by the property owners of an easement over the land and air space covered by the setback distance, which shall be prepared by a licensed attorney and approved as to form by the Haywood County attorney.

(E) *Access to Facility.* Access to the facility and shooting range shall be secured and controlled by a six (6') foot fence or by other adequate methods so that access to the facility will be controlled to ensure the safety of patrons, spectators, and the public at large. Ingress and egress shall be permitted only during operating hours as provided in §161.08. Prior to issuance of a permit to construct pursuant to this Ordinance, a valid driveway permit must be obtained from North Carolina Department of Transportation. The driveway and parking areas of the facility may be outside of the secured area, so long as access to the firing line, safety fan, surface danger zone, shot fall zone, shooting station and target areas is separately secured.

(F) *Additional Requirements.*

- (1) Any use of alcohol is prohibited on a range or facility.
- (2) All areas within the proposed facility, including but not limited to firing area(s), backstops, surface danger zones, parking and accessory areas and the like shall be under uniform control or ownership.
- (3) Any overnight or temporary storage of weapons, ammunition, and/or explosives must meet the storage and safety requirements of the United States Bureau of Alcohol, Tobacco, and Firearms and Explosives.

**§161.08 Operational Requirements.**

- (A) *Maintenance.* All shooting ranges and facilities shall be operated and maintained in a manner that will be safe and meet recognized standards and guidelines. Persons responsible for operation and maintenance of a range or facility may consider guidelines used by any credible national association, federal agency, branch of the United States military, or state government having demonstrable safety standards for ranges and facilities that will meet the intent of this ordinance.
- (B) *Best Management Practices.* Commercial Outdoor Sport Shooting Ranges and Facilities shall provide a plan outlining its Best Management Practices (BMPs) relating to lead management (Pb). The plan shall meet or exceed the guidelines as specified by the Environmental Protection Agency's (EPA) Best Management Practices for Lead at Outdoor Shooting Ranges, current edition. Any Commercial Outdoor Sport Shooting Range or Facility shall be compliant with all other local, state, and federal regulations.
- (C) *Hours of operation.* Outdoor Sport shooting ranges and facilities shall be allowed to operate only between the later of sunrise or 7:00 a.m. and sunset, except that the hours may be extended after sunset for purposes of subdued-lighting certification of law enforcement officers, or may be extended for other purposes but only when approval allowing such activity is issued in advance by the Ordinance Administrator.
- (D) The range and facility shall have a designated Range Officer present during all hours of operation.
- (E) *Range and Facility Rules.* Specific rules must be developed for each range and facility, and the range and facility rules shall be clearly posted for all persons to inspect.

- (F) *Liability insurance.* The permittee shall be required to carry a minimum of two million dollars (\$2,000,000.00 - USA) per occurrence of liability insurance. Such insurance shall name Haywood County as an additional insured party and shall save and hold Haywood County, its elected and appointed officials, and employees acting within the scope of their duties harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of a person or group's members or employees or third parties on the account of any property damage, personal injury, or wrongful death arising out of the acts or omissions of the permittee, his/her group, club, or its agents or representatives. The County shall be notified of any policy changes or lapses in coverage. Any lapse of insurance coverage shall automatically trigger a thirty (30) day period during which the Range shall not be operated until such time as new insurance shall be obtained to replace the lapsed policy with similar, equal coverage. If proof of adequate coverage is not provided to the County within thirty (30) days of the lapse, the permit shall be revoked.
- (G) *Limitation and Responsibility.* The enactment of this Ordinance does not constitute the endorsement of, the limitation of, or the prohibition of commercial outdoor sport shooting ranges and facilities. This Ordinance merely establishes baseline standards for the design of, the construction of, and the operation of commercial outdoor sport shooting ranges and facilities. This Ordinance does not, will not, and cannot infer or guarantee in any way that any person at or near a range or facility will be safe from the discharge of firearms. Haywood County hereby expressly states that the establishment of, the construction of, and the safe operation of commercial outdoor sport shooting ranges and facilities are the complete, total, and entire responsibility of the permit holder of the ranges and facilities subject to this Ordinance, and that safe use of a range or facility is the sole responsibility of the user.

#### **§161.09 Permit Required for New Ranges and Facilities.**

- (A) *Permit application.* An application for a permit to construct and operate a shooting range or facility shall be submitted by the legal property owner(s) or owner's agent, to the Ordinance Administrator. A permit to construct shall be obtained prior to issuance of any other land-disturbing, building or improvement permit by Haywood County.
- (B) *Fees.* A fee schedule may be established by the Board of County Commissioners.
- (C) *Required information.* The applicant shall provide sufficient information to evidence compliance as required by these provisions in order for the proper evaluation of the application for a permit to construct. In addition, the following shall be submitted:
- (1) An insurance binder from the insurance company to provide the required Liability insurance shall accompany the application; and,
  - (2) A written safety plan for the proposed range and facility; and,
  - (3) Copy of written specific range and facility rules.

(D) *Site plan.* A site plan for the entire range and facility which shows the following applicable information drawn to an appropriate scale, shall accompany the application:

- (1) Property lines for any parcel upon which the range and facility will be located, North arrow, plan drawn to scale, date, and ownership information for the site including but not limited to deeds, partnership documents, and/or corporate documents; and,
- (2) Complete layout of each range and facility, including shooting stations or firing lines, target areas, shot-fall zones or safety fans, backstops, berms, and baffles; and,
- (3) Projected noise contours; and,
- (4) Existing and proposed structures; occupied buildings within one thousand (1000) feet; roads, streets, or other access areas; and parking areas for the range and facility; and,
- (5) Any other information deemed necessary by the Ordinance Administrator, related to the specific type of range or facility being proposed.

(E) *Action.* Within thirty (30) working days, the Ordinance Administrator shall take one (1) of the following actions:

- (1) Reject the application as incomplete; or,
- (2) Approve the issuance of the permit to construct.
  - (a) After construction, the applicant shall request an inspection of the range and facilities by the Ordinance Administrator. If the Commercial Outdoor Sport Shooting Range complies with the provisions of this Ordinance, the Ordinance Administrator will issue a permit to operate a Commercial Outdoor Sport Shooting Range; or,
- (3) Deny the permit to construct request.

In any case, the written findings to support the action taken shall be provided to the applicant.

(F) *Permit display.* A permit to operate shall be kept and displayed in a readily visible location on the sport shooting range and facility and shall at all times be available for public inspection.

(G) *Permit transferability.* A permit to operate issued pursuant to this Ordinance may not be transferred to another person (as defined herein) without the written approval and consent of the Ordinance Administrator.

- (H) *Changes or expansions.* If any shooting range or facility undergoes a substantial change of use including types of ranges, operations, or activities not covered by an approved permit to operate or otherwise resulting in nonconformance with this Ordinance, new permits for the entire facility must be obtained in accordance with all of the provisions of this Ordinance.

**§161.10 Documentation and Compliance of Existing Ranges.**

- (A) *Documentation.* All ranges or facilities in operation prior to February 15, 2016, and seeking an exception from the provisions of this ordinance, shall provide a site plan prepared in accordance with §161.09(D) to the County within one hundred twenty (120) days after the effective date of this Ordinance. No fees will be charged, and a permit will not be required for current phases of existing ranges or facilities.
- (B) *Compliance.* Any existing shooting range or facility determined not to be in compliance with this ordinance must, upon expansion or sale, obtain a permit to operate and comply with this Ordinance within sixty (60) days of the expansion or sale.
- (C) *Abandonment and discontinuance.* When an existing range or facility is discontinued without the intent to reinstate the range or facility use, the property owner shall notify the County of such intent. In any event, the discontinuance of the range or facility or non-use of the range or facility for a period in excess of one hundred and eighty (180) days shall create the presumption said facility or range is abandoned, and such condition will result in the suspension of all current permits to operate. In order to resume operations, the Ordinance Administrator shall inspect the range or facility for compliance and permit reinstatement, and the range or facility must be in compliance in order for the permit to operate to be reinstated.

**§161.11 Variances.**

The Board of Commissioners shall have the authority to approve a variance from the terms of this Ordinance.

**§161.12 Inspections.**

- (A) The Ordinance Administrator or his or her designees may periodically inspect the development activities subject to the requirements of this Chapter and shall request, from the applicant, permission to inspect the range or facility during construction and thereafter.
- (B) If voluntary entry is denied, the Ordinance Administrator may seek any legal means to inspect the range or facility.
- (C) The Ordinance Administrator shall be responsible for all inspections, plan review and approval, enforcement, and other responsibilities as outlined in this Chapter.

**§ 161.13 Penalties, Remedies, and Enforcement.**

(A) A violation of any of the provisions of this Chapter shall be a ~~misdemeanor~~ subject to the civil penalties and enforcement provisions of G.S. § 153A-123.

(B) Each day's continuing violation of any of the provisions of this Chapter shall constitute a separate and distinct violation.

~~(C) The provisions of this Chapter may be enforced by any one or more of the remedies authorized by G.S. § 153A-123.~~

~~(CD)~~ Failure to document an existing range or facility in accordance with § 161.10(A) shall void all provisions granted in this Ordinance for existing ranges and facilities.

~~(Ord. passed 4-18-16; Am. Ord. passed 1-3-22)~~

**§ 161.14 Severability.**

If any section or sections of this Chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

**§ 161.15 Effective Date and Revision of Original Ordinance.**

This revised ordinance revises and supplants the ordinance in Chapter 161 originally adopted April 18, 2016, and all subsequent amendments, and shall be effective on and after January 3, 2022.

~~This Ordinance shall become effective upon its adoption, this the \_\_\_\_\_ day of~~

~~\_\_\_\_\_, 2016.~~

~~HAYWOOD COUNTY BOARD OF COMMISSIONERS~~