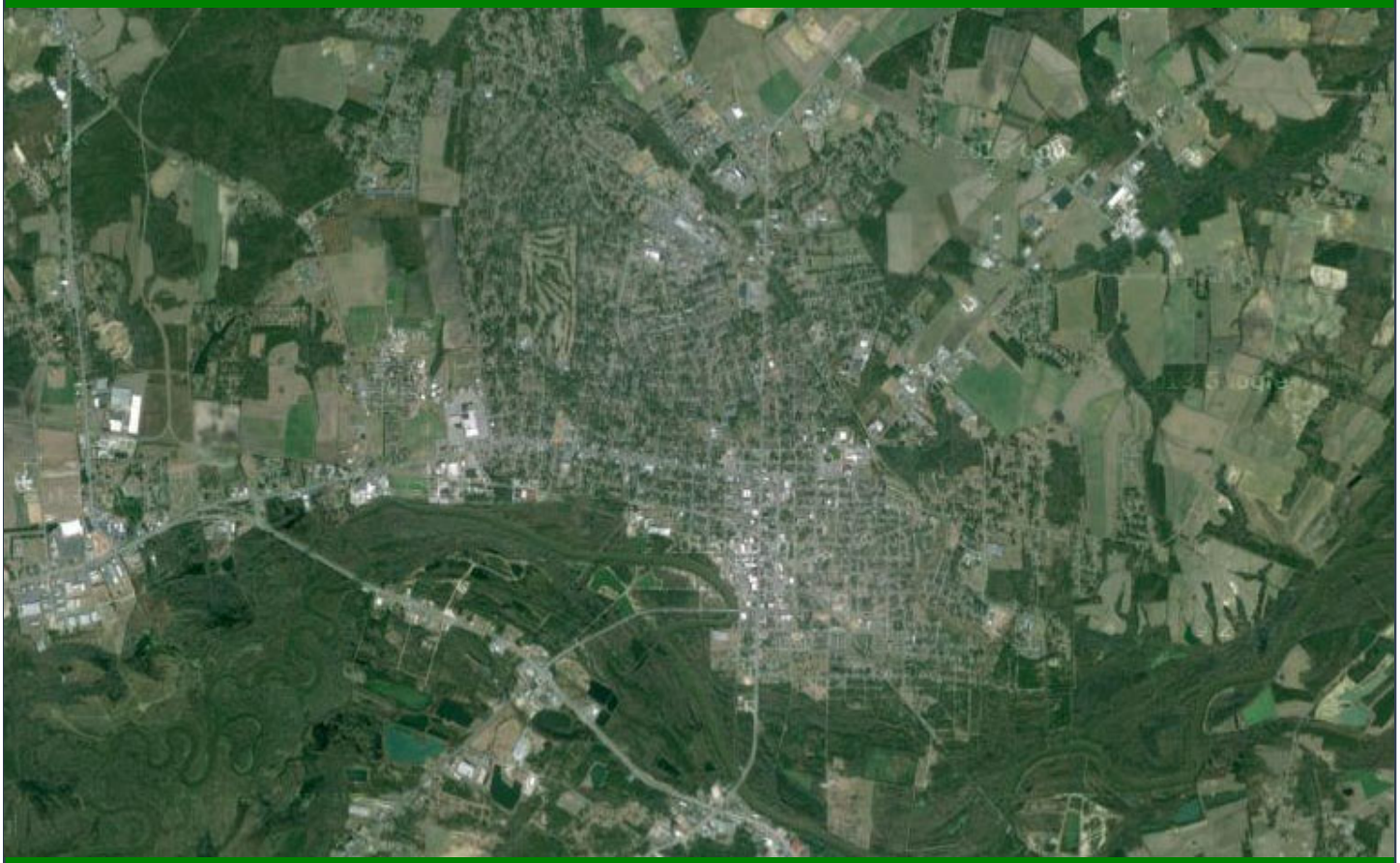
City of Kinston



Unified Development Ordinance

Adopted: November 4, 2013, includes amendments through November 20, 2017

Kinston
NORTH CAROLINA

HOLLAND CONSULTING PLANNERS

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ARTICLE 1. PURPOSE AND APPLICABILITY

SECTION 1.1 SHORT TITLE.

This Ordinance shall be known and may be cited as the *Kinston Unified Development Ordinance*.

SECTION 1.2 AUTHORITY.

Zoning provisions enacted herein are under the authority of North Carolina General Statute (NCGS) 160A-381 to 160A-392, which extends to towns/cities the authority to enact regulations which promote the health, safety, morals, or the general welfare of the community. It is further authorized under NCGS 160A-382 which authorizes cities to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. This section further authorizes the establishment of overlay districts in which additional regulations may be imposed upon properties that lie within the boundary of the district. The statutes also require that all such regulations shall be uniform for each class or type of building throughout each district, but that the regulations in one district may differ from those in other districts.

Subdivision provisions enacted herein are under the authority of NCGS 160A-372 which provide for the coordination of streets within proposed subdivisions with existing or planned street and with other public facilities, the dedication or reservation or recreation areas serving residents of the immediate neighborhood within the subdivision, or alternatively, for the provision of funds to be used to acquire recreation areas serving residents of more than one neighborhood in the immediate area, and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding.

This UDO, which combines zoning and subdivision authority, is further enacted under Section 1 of SL 2005-418, a revision to NCGS 160A-363.

SECTION 1.3 APPLICABILITY.

1.3.1. This Ordinance shall be effective throughout the city♣s planning jurisdiction. The city♣s planning jurisdiction comprises the area within the corporate boundaries of the city as well as the area described in that ordinance adopted by the City Council which establishes the city♣s extraterritorial jurisdiction. Such planning jurisdiction may be modified from time to time in accordance with NCGS 160A-360.

1.3.2. In addition to other locations required by law, a copy of a map showing the boundaries of the city's planning jurisdiction shall be available for public inspection in the planning department.

1.3.3. Except as hereinafter provided, no building or structure shall be erected, moved, altered, or extended, and no land, building, or structure or part thereof shall be occupied or used unless in conformity with the regulations specified for the district in which it is located.

1.3.4. Exemptions.

1.3.4.1. These regulations shall not apply to any land or structure for which, prior to the effective date hereof, there is a properly approved site specific plan as required by the requirements previously adopted or previously approved vested rights in accordance with NCGS 160A-385.1. Any preliminary or final subdivision plat approvals required for such approved or exempted site specific plans shall be conducted in accordance with the requirements of the previous Zoning Ordinance or Subdivision Ordinance.

1.3.4.2. In accordance with NCGS 160A-392, the City of Kinston UDO applies to state-owned lands only when a building is involved.

1.3.4.3. The following are not subject to the regulations of this Ordinance:

- 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 the municipality as shown on its subdivision regulations.
- The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.
- The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
- 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 the municipality, as shown in its subdivision regulations.

ARTICLE 1. PURPOSE AND APPLICABILITY

SECTION 1.4 SEVERABILITY.

If any section or specific provision or standard of this Ordinance or any regulating district boundary arising from it is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

SECTION 1.5 VIOLATION OF UDO REGULATIONS.

1.5.1. Complaints Regarding Violations.

Whenever the UDO Administrator receives a written, signed complaint alleging a violation of the Ordinance, he/she shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions will be taken.

1.5.2. Persons Liable for Violations.

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may jointly and/or independently be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

1.5.3. Procedures Upon Discovery of Violations.

1.5.3.1. If the UDO Administrator finds that any provision of this Ordinance is being violated, he/she shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the UDO Administrator's discretion.

1.5.3.2. The final written notice (and the initial written notice may be the final notice) shall state what action the UDO Administrator intends to take if the violation is not corrected and shall advise that the UDO Administrator's decision or order may be appealed to the Board of Adjustment in accordance with Section 4.4.1.

1.5.3.3. Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of the Ordinance or pose a danger to the public health, safety, or welfare, the UDO Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 1.5.4.

1.5.4. Penalties and Remedies for Violations.

1.5.4.1. Violations of the provisions of this Ordinance or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances or conditional use permits shall be punishable by a civil penalty in accordance with the fee schedule as set forth in the city's budget or as established by resolution of the City Council (see Section 2.8). If the offender fails to pay this penalty within ten (10) days after being cited for a violation, the penalty may be recovered by the city in a civil action in the nature of debt.

1.5.4.2. This Ordinance may also be enforced by any appropriate equitable action.

1.5.4.3. Each day that any violation continues after notification by the UDO Administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section. Separate notices will not be provided for each violation.

1.5.4.4. Any one, all, or a combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

1.5.5. Permit Revocation.

1.5.5.1. Any permit issued under this Ordinance may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit recipient fails to (1) develop or maintain the property in accordance with the plans submitted, the requirements of this Ordinance, or any additional requirements lawfully imposed by the permit-issuing board, or (2) the permit was issued based on erroneous information.

1.5.5.2. Before permits other than conditional use may be revoked, the UDO Administrator shall give the permit recipient ten (10) days notice of intent to revoke the permit, shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations, and shall comply with the notice and hearing

requirements set forth in Section 4.4.6. If the permit is revoked, the UDO Administrator shall provide to the permittee a written statement of the decision and the reasons therefor. Appeals may be made to the Board of Adjustment as provided for in Section 4.4.1.

1.5.5.3. No person may continue to make use of land or building in the manner authorized by any permit issued under this Ordinance after such permit has been revoked in accordance with this Ordinance.

SECTION 1.6 EFFECTIVE DATE.

The provisions in this Ordinance were originally adopted and became effective on November 4, 2013.

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ARTICLE 2. GENERAL REGULATIONS

SECTION 2.1 CONFLICTS WITH OTHER REGULATIONS.

In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity, and general welfare. It is not intended by this Ordinance to interfere with, abrogate, or annul any easements, covenants, or other agreements between parties; provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, restrictive covenants, or agreements, the provisions of this Ordinance shall govern.

SECTION 2.2 NORTH CAROLINA STATE BUILDING CODE.

The City of Kinston Building Code with appendices and the North Carolina State Building Code are incorporated herein by reference, and serve as the basis for Building Inspector authority to regulate building construction. This Ordinance is not intended to conflict with or supersede the North Carolina State Building Code regulations.

SECTION 2.3 INTERPRETATION.

2.3.1. Responsibility.

In the event that any question arises concerning the application of regulations, performance standards, definitions, development criteria, or any other provision of the UDO, the UDO Administrator shall be responsible for interpretation and shall look to the Ordinance for guidance. Responsibility for interpretation by the UDO Administrator shall be limited to standards, regulations and requirements of the UDO, but shall not be construed to include interpretation of any technical codes adopted by reference in the UDO, and shall not be construed as overriding the responsibilities given to any commission, board, building inspector, or city officials named in other sections or articles of the UDO.

2.3.2. Permitted Uses

If a use is not specifically listed in any of the districts listed in this Ordinance, then the UDO Administrator shall have the authority to interpret in which district the use, if any, should be permitted. If the UDO Administrator rejects a proposal for a use that is not clearly disallowed in a particular district, then the UDO Administrator shall:

2.3.2.1. Ensure that the citizen is provided with a copy of the interpretation in writing.

2.3.2.2. Inform the citizen of the right to appeal the decision to the Board of Adjustment.

2.3.2.3. Assist with the development of a proposed zoning text change for consideration by the Planning Board and City Council allowing policy-makers to determine whether the proposed use should be an allowable use in the district or not. Financial responsibility for a proposed zoning text change shall be on the applicant.

SECTION 2.4 IDENTIFICATION OF OFFICIAL ZONING MAP.

2.4.1. The Zoning Map shall be identified by the signature of the Mayor attested by the City Clerk and bearing the seal of the City under the following words: ■This is to certify that this is the Official Zoning Map of the Unified Development Ordinance, Kinston, North Carolina,• together with the date of the adoption of this Ordinance and most recent revision date.

2.4.2. If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other items portrayed on the Zoning Map, such changes shall be entered on the official zoning map promptly after the amendment has been approved by the City Council, with an entry on the official zoning map denoting the date of amendment, description of amendment, and signed by the City Clerk. No amendment to this Ordinance which involves matter portrayed on the official zoning map shall become effective until after such change and entry has been made on said map.

2.4.3. No changes of any nature shall be made in the official zoning map or matter shown thereon except in conformity with the procedures set forth in this Ordinance and state law. Any unauthorized change of whatever kind by any person shall be considered a violation of this Ordinance and punishable as provided under Section 1.5.

2.4.4. Regardless of the existence of purported copies of the official zoning map which may from time to time be made or published, the official zoning map, which shall be located in the office of the City Clerk, shall be the final authority as to the zoning status of land and water areas, buildings, and other structures in the city.

2.4.5. In the event the official zoning map becomes damaged, destroyed, lost, or difficult to interpret, the City Council may by resolution adopt a new official zoning map which shall supersede the prior zoning map. The new official zoning map may correct drafting errors or other errors or omissions in the prior official zoning map, but no correction shall have the effect of amending the original official zoning map, or any subsequent amendment thereof. The new official zoning map

shall be identified by the signature of the Mayor attested by the City Clerk, and bearing the seal of the City under the following words: ■This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced), as part of the Unified Development Ordinance, Kinston, North Carolina.•

2.4.6. Unless the prior official zoning map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining, shall be preserved together with all available records pertaining to its adoption or amendment.

SECTION 2.5 ZONING MAP INTERPRETATION.

Where uncertainty exists with respect to the boundaries of any district shown on the Zoning Map, the following rules shall apply:

2.5.1. Use of Property Lines.

Where district boundaries are indicated as approximately following street lines, alley lines, and lot lines, such lines shall be construed to be such boundaries. Where streets, highways, railroads, water courses, and similar areas with width are indicated as the district boundary, the actual district boundary line shall be the centerline of such area.

2.5.2. Use of the Scale.

In unsubdivided property or where a zone boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shall be determined by use of the scale appearing on the map.

2.5.3. Vacated or Abandoned Streets.

Where any street or alley is hereafter officially vacated or abandoned, the zoning regulations applicable to each parcel of abutting property shall apply to the centerline of such abandoned street or alley.

2.5.4. Split Zoned Parcels.

If a district boundary divides a parcel, the requirement for the district in which the greater portion of the parcel lies shall be extended to the remainder of the parcel, provided that such extension shall not include any part of such parcel which lies more than one hundred and fifty (150) feet beyond the existing district boundary, and further provided that the remaining parcel shall not be less than the minimum required for the district in which it is located.

2.5.5. Flood Hazard Boundaries.
Interpretations of the location of floodway and floodplain boundary lines shall be made by the Administrator.

2.5.6. Board of Adjustment.
In case any further uncertainty exists, the Board of Adjustment shall interpret the intent of the map as to location of such boundaries.

SECTION 2.6 RELATIONSHIP TO LAND USE PLAN.

It is the intention of the council that this Ordinance implement the planning policies adopted by the council for the city and its extraterritorial planning area, as reflected in the land use plan and other planning documents. While the council reaffirms its commitment that this Ordinance and any amendment to it be in conformity with adopted planning policies, the council hereby expresses its intent that neither this Ordinance nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

SECTION 2.7 NO USE OR SALE OF LAND OR BUILDINGS EXCEPT IN CONFORMITY WITH ARTICLE PROVISIONS.

2.7.1. Subject to Article 8 of this Ordinance (Nonconforming Situations), no person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his control except in accordance with all of the applicable provisions of this Ordinance.

2.7.2. For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

SECTION 2.8 FEES.

2.8.1. Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice, and similar matters may be charged to applicants for zoning permits, sign permits, conditional use permits, special use permits, major and minor subdivision plat approval, zoning amendments, variances, appeals, and other administrative relief, street closings, and site plan review. The amount of the fees charged shall be set forth in the city's budget or as established by resolution of the council files in the Office of the City Clerk.

2.8.2. Fees established in accordance with subsection 2.8.1, above, shall be paid upon submission of a signed application or notice of appeal.

SECTION 2.9 COMPUTATION OF TIME.

2.9.1. Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday, or legal holiday, that day shall be excluded. When the period of time prescribed is less than seven (7) days, intermediate Saturdays, Sundays, and holidays shall be excluded.

2.9.2. Unless otherwise specifically provided, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice and the notice or paper is served by mail (Certified Mail/Return Receipt Requested), three days shall be added to the prescribed period.

SECTION 2.10 REDUCTION OF LOT AND YARD AREAS PROHIBITED.

No yard or lot existing at the time of passage of this Ordinance shall be reduced in size or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least these minimum requirements.

SECTION 2.11 STREET ACCESS.

No building shall be erected on a lot which does not abut a street or have access to a public right-of-way. A building(s) may be erected adjoining a parking area or dedicated open space which has access to a street used in common with other lots.

SECTION 2.12 RELATIONSHIP OF BUILDING TO LOT.

Every building hereafter erected, moved, or structurally altered, shall be located on a lot and in no case shall there be more than one principal building and its customary accessory buildings on the lot except in the case of a designed complex of professional, residential, or commercial buildings in an appropriate zoning district, i.e., school campus, apartments, condominiums, shopping center, and industrial park. Detached garages and carports must meet the same setback requirements as the principal building, just as if they were attached.

ARTICLE 2. GENERAL REGULATIONS

SECTION 2.13 REQUIRED YARDS NOT TO BE USED BY BUILDING.

The minimum yards or other open spaces required by this Ordinance for each and every building shall not be encroached upon or considered as meeting the yard and open space requirements of any other building.

SECTION 2.14 LOT REQUIREMENTS/DIMENSIONS.

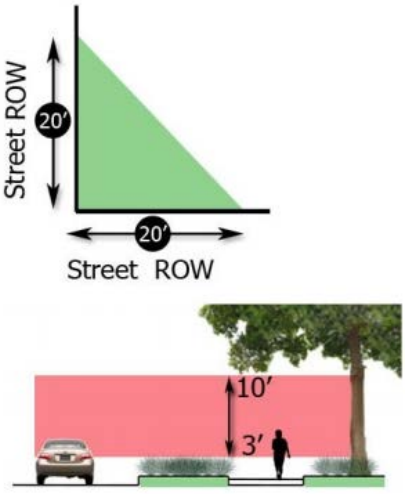
2.14.1. Insofar as practical, side lot lines which are not right-of-way lines shall be at right angles to straight street lines or radial to curved street lines.

2.14.2. Every lot shall have sufficient area, dimensions, and street access to permit a principal building to be erected thereon in compliance with all lot size and dimensions, yard space, setback, and other requirements of this Ordinance.

2.14.3. The location of required front, side, and rear yards on irregularly shaped lots shall be determined by the UDO Administrator. The determination will be based on the spirit and intent of this Ordinance to achieve an appropriate spacing and location of buildings and structures on individual lots.

SECTION 2.15 STREET INTERSECTION SIGHT VISIBILITY TRIANGLE.

The land adjoining a street intersection or egress to a street from off-street parking areas shall be kept clear of obstructions to protect the visibility and safety of motorists and pedestrians. On a corner lot, nothing shall be erected, placed, or allowed to grow in a manner so as materially to impede vision between a height of three feet and ten feet in a triangular area formed by a diagonal line between two points on the right-of-way lines, 20 feet from where they intersect. A clear view shall be maintained on corner lots from 3 to 10 feet in vertical distance.



ARTICLE 2. GENERAL REGULATIONS

SECTION 2.16 PROPERTY DEDICATED FOR PRIVATE USE.

Any property dedicated for private ownership, including but not limited to property owners association ownership, for any use permitted by this Ordinance is not the maintenance responsibility of the City of Kinston.

SECTION 2.17 MEASUREMENT OF DISTANCE.

All measurements for the purpose of the separation of uses shall be from the closest points of property line to property line for the parcels on which the uses are located.

ARTICLE 3.
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ARTICLE 3. ADMINISTRATIVE/LEGISLATIVE AUTHORITY

SECTION 3.1 UDO ADMINISTRATOR.

3.1.1. The UDO Administrator, to be designated by the City Manager, is hereby authorized and it shall be his/her duty to enforce the provisions of this Ordinance. This official shall have the right to enter upon any premises regulated by this Ordinance at any reasonable time necessary to carry out his/her duties. It is the intention of this Ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the UDO Administrator. Appeal from his/her decision may be made to the Board of Adjustment. The UDO Administrator may be assisted by other City staff in performing the duties herein.

3.1.2. In administering the provisions of this Ordinance, the UDO Administrator shall:

3.1.2.1. Make and maintain records of all applications for permits, conditional uses, special uses, and requests listed herein, and records of all permits issued or denied, with notations of all special conditions or modifications involved;

3.1.2.2. File and safely keep copies of all plans submitted, and the same shall form a part of the records of his/her office and shall be available for inspection at reasonable times by any interested party;

3.1.2.3. Transmit to the Planning Board, City Council, and/or the Board of Adjustment all applications and plans for which their review and approval is required;

3.1.2.4. Review and approve minor site plans, minor subdivisions, engineering drawings, and final plats;

3.1.2.5. Approve major and minor subdivision final plats; and

3.1.2.6. Conduct inspections of premises and, upon finding that any of the provisions of this Ordinance are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The UDO Administrator shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or of additions, alterations, or structural changes thereto which are not compliant with the UDO; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

3.1.3. In addition, the UDO Administrator shall have the following duties:

3.1.3.1. Prepare a report of his/her recommendations for the Planning Board, Board of Adjustment, or City Council as may be required;

3.1.3.2. Provide administrative interpretations of the UDO;

3.1.3.3. Provide nonconformity determinations, including expansions of nonconforming uses and structures;

3.1.3.4. Review and approve zoning compliance applications;

3.1.3.5. Review and approve applications for temporary uses, including special events;

3.1.3.6. Conduct concept meetings with applicants for development approval as necessary or appropriate;

3.1.3.7. Maintain the official zoning map and the public records of the Planning Board and Board of Adjustment; and

3.1.3.8. Perform site inspections.

SECTION 3.2 CONFLICTS OF INTEREST.

Members of the City Council, Planning Board, and Board of Adjustment must act in the public interest and not to advance their own financial interests. A member of an elected board, planning board or board of adjustment may not vote on a UDO action where there is a potential financial conflict of interest. If the outcome of the vote is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member, the member must not vote on it. If a Planning Board or Board of Adjustment makes special use, conditional use, variance, appeal, or interpretation decisions, they must not participate in the discussion or voting if they have a personal bias, a predetermined opinion on the matter, a close family or business tie to a party, or a financial interest in the outcome. When a member is disqualified for a conflict of interest, that member must not participate in the hearing in any way, neither asking questions, nor debating, nor voting on the case. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

ARTICLE 3. ADMINISTRATIVE/LEGISLATIVE AUTHORITY

SECTION 3.3 PLANNING BOARD.

3.3.1. Authority.

The Planning Board of the City of Kinston is created pursuant to NCGS 160A-361.

3.3.2. Purpose.

The Planning Board shall act in an advisory capacity to the City Council in the matter of guiding and accomplishing a coordinated and harmonious development of the area within the city jurisdiction.

3.3.3. Operational Procedures.

3.3.3.1. Membership.

3.3.3.1.1. There shall be a Planning Board consisting of seven (7) members. The Planning Board members shall also be appointed to serve as Board of Adjustment members. Five (5) members, appointed by the City Council, shall reside within the city. Two (2) members, appointed by the County Board of Commissioners, shall reside within the city♠s extraterritorial planning area. If, despite good faith efforts, sufficient numbers of residents of the extraterritorial planning area cannot be found to fill the seats reserved for residents of such area, then the County Board of Commissioners may appoint other residents of the county (including residents of the city) to fill these seats. If the County Board fails to make these appointments within ninety (90) days after receiving a resolution from the City Council requesting that they be made, then the City Council may make them.

3.3.3.1.2. Planning Board members shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed. Initially, two (2) in-city members and one (1) extraterritorial area resident shall be appointed for three-year terms, two (2) in-city members shall be appointed for two-year terms, and one (1) in-city member and one (1) extraterritorial area resident shall be appointed for one-year terms. Vacancies may be filled for the unexpired terms only.

3.3.3.1.3. Members may be appointed to not more than two (2) complete successive terms.

3.3.3.1.4. Planning Board members may be removed by the City Council at any time for failure to attend three (3) consecutive meetings or for failure to attend seventy-five percent (75%) or more of the meetings within any twelve-month period or for any other good cause related to performance of duties.

3.3.3.1.5. If an in-city member moves outside the city or if an extraterritorial area member moves outside the planning jurisdiction, that shall constitute a resignation from the Planning Board, effective upon the date a replacement is appointed by City Council.

3.3.3.2. Meetings of the Planning Board.

3.3.3.2.1. The Planning Board shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with Section 4.4.4 (Requests to be Heard Expeditiously).

3.3.3.2.2. The Planning Board shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

3.3.3.2.3. Minutes shall be kept of all Board proceedings.

3.3.3.2.4. All Board meetings shall be open to the public and whenever feasible, the agenda for each Board meeting shall be made available in advance of the meeting.

3.3.3.3. Quorum and Voting.

3.3.3.3.1. A quorum for the Planning Board shall consist of a majority of the Board membership (excluding vacant seats). A quorum is necessary for the Board to take official action.

3.3.3.3.2. All actions of the Planning Board shall be taken by majority vote, a quorum being present. For the purposes of this subsection, vacant positions on the board and members who are excused from voting shall not be considered "members of the board" for calculation of the requisite majority.

3.3.3.3.3. A roll call vote shall be taken upon the request of any member.

3.3.3.3.4. Extraterritorial planning area members may vote on all matters considered by the Board, regardless of whether the property affected lies within or without the city.

3.3.3.4. Planning Board Officers.

3.3.3.4.1. At its first meeting in June each year, the Planning Board shall, by majority vote of its membership (excluding vacant seats), elect one (1) of its members to serve as Chairman and preside over the Board♠s meetings, one (1) member to serve as First Vice-Chairman, and one (1) member to serve as Second Vice-Chairman. The persons so designated shall serve in these capacities for terms on one (1) year. Vacancies in these offices may be filled for the unexpired terms only by majority vote of the board membership (excluding vacant seats).

3.3.3.4.2. The Chairman shall decide all points of order and procedures, subject to the Board♠s by-laws and rules of procedure. He shall appoint any committees found necessary to investigate any matters before the Board. The Chairman shall cast no vote except to amend the rules of procedure or in the event of a tie vote by the other members or where his vote is required for a quorum.

3.3.3.4.3. The First Vice-Chairman shall serve as acting Chairman in the absence of the Chairman and at such times shall have the same duties and powers as the Chairman.

3.3.3.4.4. The Second Vice-Chairman shall have the same duties as the First Vice-Chairman, except that he shall serve in the absences of both the Chairman and First Vice-Chairman.

3.3.3.4.5. The Planning Director shall act as Secretary to the Board. The Secretary shall keep all records and generally supervise the clerical work of the Board. The Secretary shall not have voting rights. He shall keep the minutes for every meeting, which shall include the record of all important facts pertaining to each meeting, of every resolution acted upon, and all votes taken in final determination of any question. Minutes shall indicate, by name, abstaining from a vote. The official minutes of the meeting of the Planning Board shall be a public record, kept in the Planning Department and available for inspection during normal business hours.

3.3.3.5. General Powers and Duties. The general powers and duties of the Planning Board (with prior approval by the City Council) are:

3.3.3.5.1. To make studies of the area within its jurisdiction and present recommendations to the City Council.

3.3.3.5.2. To determine objectives to be sought in the development of the study area and present recommendations to the City Council.

3.3.3.5.3. To prepare and recommend plans for achieving these objectives.

3.3.3.5.4. To prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical, social, and economic development of the area and present recommendations to the City Council for consideration.

3.3.3.5.4.1. The comprehensive plans, with the accompanying maps, plats, charts, and descriptive matter, shall show the Planning Board's recommendation to the City Council for the development of the area, including, among other things, the general location, character, and extent of streets, bridges, boulevards, parkways, playgrounds, squares, parks, and aviation fields; and other public ways, grounds, and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, power, gas, sanitation, transportation, communication and other purposes; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any of the foregoing ways, buildings, grounds, open spaces, properties, utilities, or terminals.

3.3.3.5.4.2. The comprehensive plans and any ordinances or other measures to effectuate the plans shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, best promote health, safety, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient

distribution of population, the promotion of good civic design and arrangement, the wise and efficient expenditure of public funds, and the adequate provision of public utilities, services, and other public requirements. Should also require stormwater management certification.

3.3.3.5.5. To prepare and recommend ordinances promoting orderly development along lines indicated in the Comprehensive Plan and advise concerning proposed amendments of such ordinances.

3.3.3.5.6. To determine whether proposed developments conform to the principles and requirements of the Comprehensive Plan for the growth and improvement of the area and ordinances adopted in furtherance of such plan.

3.3.3.5.7. To approve major site plans and major subdivisions in accordance with Section 5.4.

3.3.3.5.8. To keep the City Council and the general public informed and advised as to these matters.

3.3.3.5.9. To perform any other duties that may lawfully be assigned to it.

3.3.3.5.10. In order to effectively carry out its powers and duties, the Planning Board is empowered to:

3.3.3.5.10.1. With prior approval of the City Council, gather statistics on past trends and present conditions with respect to population, property values, the economic base of the area, and land use; and such other information as is important or likely to be important in determining the amount, direction, and kind of development within the City=s jurisdiction and its various parts.

3.3.3.5.10.2. With prior approval by the City Council, make, cause to be made, or obtain special studies on the location, the condition, and the adequacy of specific facilities, which may include but are not limited to studies of housing; commercial and industrial facilities; recreation area; public facilities; and traffic and parking facilities.

3.3.3.6. Planning Board Initiated UDO Amendments. The Planning Board may initiate from time to time proposals for amendments of the UDO and Zoning Map, based upon its studies and plans. It shall review and make recommendations to the City Council concerning all proposed amendments to the UDO and Zoning Map.

3.3.3.7. Public Hearings. The Planning Board may conduct such public hearings as may be required to gather information necessary for the drafting, establishment, and maintenance of the plans. Before recommending any such plans to the City Council, the Planning Board may hold a public hearing thereon in accordance with Article 4.

3.3.3.8. Advisory Committees.

3.3.3.8.1. From time to time, City Council may appoint one (1) or more individuals to assist the Planning Board to carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Council may appoint advisory committees to consider thoroughfare plan(s), bikeway plan(s), housing plans, and economic development plans, etc.

3.3.3.8.2. Members of such advisory committees shall sit as nonvoting members of the Planning Board when such issues are being considered and lend their talents, energies, and expertise to the Planning Board. However, all formal recommendations to the City Council shall be made by the Planning Board.

3.3.3.8.3. Nothing in this Article shall prevent the Council from establishing independent advisory groups, committees, or boards to make recommendations on any issue directly to the Council.

SECTION 3.4 BOARD OF ADJUSTMENT.

3.4.1. Powers and Duties.

3.4.1.1. The Board of Adjustment shall hear and decide:

3.4.1.1.1. Requests for variances (as provided in Section 4.4.2) and appeals of decisions of administrative officials charged with enforcement of this Ordinance (as provided in Section 4.4.1). As used in this subsection, the term ▪decision▪

includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use and development.

3.4.1.1.2. Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines (as provided in Section 4.4.3).

3.4.1.1.3. Any other matter the Board is required to act upon by any other city ordinance.

3.4.1.2. The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Article.

3.4.2. Operational Procedures.

3.4.2.1. Membership.

3.4.2.1.1. There shall be a Board of Adjustment consisting of seven (7) members. The Board of Adjustment members shall also be appointed to serve as Planning Board members. Five (5) members, appointed by the City Council, shall reside within the City. Two (2) members, appointed by the County Board of Commissioners, shall reside within the City's extraterritorial planning area. If, despite good faith efforts, sufficient numbers of residents of the extraterritorial planning area cannot be found to fill the seats reserved for residents of such area, then the County Board of Commissioners may appoint other residents of the county (including residents of the city) to fill these seats. If the County Board of Commissioners fails to make these appointments within ninety (90) days after receiving a resolution from the council requesting that they be made, the council may make them.

3.4.2.1.2. Board of Adjustment members shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed. Initially, two (2) in-city members and one (1) extraterritorial area member shall be appointed for three-year terms, two (2) in-city members shall be appointed for two-year terms, and one (1) in-city member and one (1)

extraterritorial area member shall be appointed for one-year terms. Vacancies may be filled for the unexpired terms only.

3.4.2.1.3. Members may be appointed to not more than two (2) successive complete terms.

3.4.2.1.4. Board of Adjustment members may be removed by the Council at any time for failure to attend three (3) consecutive meetings or for failure to attend seventy-five (75) percent or more of the meetings within any twelve-month period or for any other good cause related to performance of duties. Upon request of the member proposed for removal, the council shall hold a hearing on the removal before it becomes effective.

3.4.2.1.5. If an in-city member moves outside the city, or if an extraterritorial area member moves outside the planning jurisdiction, that shall constitute a resignation from the Board, effective upon the date a replacement is appointed.

3.4.2.1.6. Extraterritorial planning area members may vote on all matters coming before the board.

3.4.2.1.7. The Board of Adjustment shall keep minutes of its procedures, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact; and final disposition of appeals shall be taken, all of which shall be of public record.

3.4.2.2. Meetings of the Board of Adjustment.

3.4.2.2.1. The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with Section 4.4.4 (Requests to be Heard Expeditiously).

3.4.2.2.2. The Board shall conduct its meetings in accordance with the quasi-judicial procedures set forth in Sections 4.4.9 through 4.4.12.

3.4.2.2.3. All meetings of the Board shall be open to the public and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.

3.4.2.3. Quorum.

3.4.2.3.1. A quorum for the Board of Adjustment shall consist of the number of members equal to four-fifths of the regular Board membership (excluding vacant seats). A quorum is necessary for the board to take official action.

3.4.2.3.2. A member who has withdrawn from the meeting without being excused as provided in Section 3.4.2.4.3 shall be counted as present for purposes of determining whether a quorum is present.

3.4.2.4. Voting.

3.4.2.4.1. The concurring vote of four-fifths of the Board membership (excluding vacant seats) shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

3.4.2.4.2. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection 3.4.2.4.3 or has been allowed to withdraw from the meeting in accordance with subsection 3.4.2.4.4.

3.4.2.4.3. A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:

3.4.2.4.3.1. If the member has a direct financial interest in the outcome of the matter at issue; or

3.4.2.4.3.2. If the matter at issue involves the member's own official conduct; or

3.4.2.4.3.3. If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or

3.4.2.4.3.4. If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.

3.4.2.4.4. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

3.4.2.4.5. A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

3.4.2.4.6. A roll call vote shall be taken upon the request of any member.

3.4.2.5. Board of Adjustment Officers.

3.4.2.5.1. At its first regular meeting in June, the Board of Adjustment shall, by majority vote of its membership (excluding vacant seats), elect one (1) of its members to serve as Chairman and preside over the Board's meetings and one (1) member to serve as Vice-Chairman. The persons so designated shall serve in these capacities for terms of one (1) year. Vacancies may be filled for the unexpired terms only by majority vote of the board membership (excluding vacant seats).

3.4.2.5.2. The Chairman or any member temporarily acting as Chairman may administer oaths to witnesses coming before the board.

3.4.2.5.3. The Chairman of the Board of Adjustment shall not vote unless:

3.4.2.5.3.1. A tie vote of the remaining Board members has occurred; or

3.4.2.5.3.2. A four-fifths vote cannot be obtained by the members present.

3.4.2.6. Conflicts on Quasi-Judicial Matters. A member of the Board of Adjustment or any other body exercising the functions of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a

financial interest in the outcome of the matter. If an objection is raised to member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote, rule on the objection.

3.4.3. Rules of Procedure.

The Board of Adjustment shall adopt rules of procedure for the conduct of its affairs and in keeping with the provisions of this Ordinance. Such rules of procedure shall not be effective until approved by the City Council. All meetings held by the Board of Adjustment shall be held in accordance with NCGS Chapter 143A, Article 33 B, or as may be amended. The Board shall keep minutes of its proceedings suitable for review in Court showing:

3.4.3.1. The factual evidence presented to the Board of Adjustment by all parties concerned.

3.4.3.2. The findings of fact and the reasons for the determinations by the Board of Adjustment.

3.4.3.3. The vote of each member, or if absent or failing to vote, indicating such fact, all of which shall be public record and be filed with the office of the City Clerk.

SECTION 3.5 CITY COUNCIL.

3.5.1. The City Council, in considering conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Sections 4.4.9 through 4.4.12.

3.5.2. In considering proposed changes in the text of this Ordinance or in the zoning map, the Council acts in its legislative capacity and must proceed in accordance with the requirements of Section 4.4.1.

3.5.3. Unless otherwise specifically provided in this Article, in acting upon conditional use permit requests or in considering amendments to this Article or the zoning map, the council shall follow the regular, voting, and other requirements as set forth in other provisions of the city code, the city charter, or general law.

3.5.4. The City Council, in considering the approval of a site-specific development plan (as defined in Section 4.2, Establishment of Vested Rights), shall follow the procedural requirements set forth in Section 4.5 for the issuance of a conditional use permit.

ARTICLE 3. ADMINISTRATIVE/LEGISLATIVE AUTHORITY

SECTION 3.6 HISTORIC DISTRICT COMMISSION.

3.6.1. Purpose.

The Kinston Historic District[s], hereinafter referred to as the "districts," are one of the most valued and important assets of Kinston. They are established for the purpose of protecting and conserving the heritage of the City of Kinston, Lenoir County, and the State of North Carolina; for the purpose of safeguarding the character and heritage of the districts by preserving the districts as whole and any individual property therein that embodies important elements of its social, economic, cultural, political, or architectural history; for the purpose of promoting the conservation of such districts for the education, pleasure and enrichment of residents of the districts and the City of Kinston/Lenoir County, and state as a whole; for the purpose of stabilizing and enhancing property values throughout the districts as a whole, thus contributing to the improvement of the general health and welfare of Kinston and the residents of the districts.

3.6.2. Appointment and Terms of Historic Commission.

3.6.2.1. There shall be an historic district commission consisting of not less than eight (8) nor more than eleven (11) members. The members shall be appointed by the City Council for terms set by the City Council. All members must reside within the city limits or extraterritorial jurisdiction (ETJ) of the City of Kinston; in addition, twenty (20) percent of the members shall be residents of a historic district or be owners of historic property pursuant to NCGS 160A-400.7.

3.6.2.2. All of the members shall have demonstrated special interest, experience or education in historic preservation, history, architecture, archeology or related field(s).

3.6.2.3. Regular and prompt attendance at all meetings of the commission and conscientious performance of the duties required of members shall be a prerequisite to continuing membership on the commission. Should a member fail to attend three (3) consecutive regular meetings of the commission or fail to attend seventy-five (75) percent or more of the meetings within any twelve-month period, and should there be no adequate excuse for such absences, the chairman, with the concurrence of a majority of the entire commission, shall recommend to the City Council that a vacancy be declared and that the vacated position be filled within sixty (60) days.

3.6.3. Meetings of the Historic District Commission.

3.6.3.1. A meeting schedule shall be established by the Commission. Meetings shall be conducted in the city hall; provided, that meetings may be held at some other convenient place if directed by the chairman giving due notice to the public forty-eight (48) hours in advance of the meeting.

3.6.3.2. Special meetings of the commission may be called at any time by the chairman or upon the request of three (3) members of the commission. At least forty-eight (48) hours' notice of the time and place of special meetings shall be given by the secretary or by the chairman to each member of the commission; provided, that this requirement may be waived by action of a majority of all members.

3.6.3.3. Whenever there is no business for the commission, the chairman may dispense with a regular meeting by giving notice to all the members not less than twenty-four (24) hours prior to the time set for the meeting.

3.6.3.4. All meetings shall be open to the public in accordance with North Carolina Open Meetings Law, Chapter 143, Article 33C. The business at regular meetings shall include: (i) roll call; (ii) approval of minutes of previous meetings; (iii) unfinished business; (iv) consideration of applications; (v) reports of committees; and (vi) adjournment.

3.6.4. Quorum and Voting.

3.6.4.1. A quorum for the historic district commission shall consist of fifty (50) percent plus one (1) member of the commission membership (excluding vacant seats). A quorum is necessary for the commission to take official action.

3.6.4.2. All actions of the commission shall be taken by majority vote, a quorum being present.

3.6.4.3. A roll call shall be taken upon the request of any member.

3.6.5. Historic District Commission Officers.

At its first regular meeting in March of each year, the Historic District Commission shall, by majority vote of its membership (excluding vacant seats), elect one (1) of its members to serve as chairman and preside over the commission meetings and one (1) member to serve as

vice-chairman. A member of the planning and development staff shall be designated by the department director to serve as secretary to the commission. The duties of the officers shall be as directed by the commission in its by-laws. Vacancies in the office of chairman and vice-chairman may be filled for the unexpired terms only by a majority vote of the commission membership.

3.6.6. Powers and Duties of the Historic District Commission.

3.6.6.1. The historic district commission shall:

3.6.6.1.1. Review and act upon applications for certificates of appropriateness for constructing, altering, or demolishing buildings or structures within the designated historic district.

3.6.6.1.2. Issue certificates of appropriateness in accordance with the procedures delineated in Sections 9.114 and 9.115.

3.6.6.1.3. Keep permanent minutes of all its meetings. The minutes shall record attendance of its members, its resolutions, findings, recommendations and actions. The minutes of the commission shall be a public record.

3.6.6.1.4. Prepare and submit an annual report to the City Council by March thirty-first of each year. Such report shall include a comprehensive and detailed review of the activities, problems and actions of the commission as well as any budget requests and/or recommendations.

3.6.6.2. The commission may request the North Carolina Department of Cultural Resources or the North Carolina Historic Commission to review, comment on, and make recommendations upon all applications for a certificate of appropriateness.

3.6.6.3. The commission shall adopt rules and regulations governing its procedures and operations, not inconsistent with the provisions of this ordinance and NCGS 160A-400.1 through 160-400.14.

3.6.6.4. The Historic District Commission is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this section and NCGS 160A-19(3)(C), including, but not limited to, the following:

3.6.6.4.1. Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;

3.6.6.4.2. Recommend to the City Council districts or areas to be designated by ordinance as historic districts;

3.6.6.4.3. Recommend to the City Council designation of any district or area as a historic district or part thereof be revoked or removed for cause;

3.6.6.4.4. Consider and grant or deny applications for certificates of appropriateness in accordance with the city's unified development ordinance and the North Carolina General Statutes 160A-400.9 through 160A-400.14;

3.6.6.4.5. Give advice to property owners concerning the treatment of the historical and visual characteristics of their properties located within the district, such as color schemes, garden and landscape features, and minor decorative elements;

3.6.6.4.6. Propose to the City Council changes to this section or any related ordinance and propose new ordinances or laws relating to the total program for the development of the historical resources of the city and its environs;

3.6.6.4.7. Cooperate with the county commissioners, boards or commissions, or other governmental units; offer or request assistance, aid, guidance or advice concerning matters under is purview or of mutual interest;

3.6.6.4.8. Distribute information about, or otherwise inform the owners of property within the district, of any matters pertinent to its duties, organization, procedures, responsibilities, functions or requirements;

3.6.6.4.9. Conduct an education program with respect to historic properties and districts within its jurisdiction;

3.6.6.4.10. Report violations of this section or related ordinances to the local official responsible for enforcement;

3.6.6.4.11. Assist the city administrative staff in obtaining the services of private consultants and in carrying out programs or research or analysis;

3.6.6.4.12. Accept funds granted to the commission from private or nonprofit organizations, subject to the requirements of the Local Government Budget and Fiscal Control Act, NCGS 159-7 et seq. Any grants, gifts, appropriations or funds received by or made available to the commission from whatever source shall be handled through and administered by the city;

3.6.6.4.13. Contract with the approval of the City Council for services or funds from the state and agencies or departments of the United States Government, or with any other organization provided the terms are not inconsistent with state or federal law;

3.6.6.4.14. Recommend to the City Council and the state structures, sites, objects or districts worthy of national, state or local recognition;

3.6.6.4.15. Initiate and participate in negotiations with owners and other parties in an effort to find means of preserving buildings scheduled for demolition;

3.6.6.4.16. Establish guidelines under which the administrator or designee may approve minor modifications to properties on behalf of the commission. No applications will be denied without first being considered by the commission;

3.6.6.4.17. Conduct public hearings on applications for certificates of appropriateness where the commission deems such a hearing necessary (NCGS 160A-400.9(c);

3.6.6.4.18. Organize itself and conduct its business by whatever legal means it deems proper;

3.6.6.4.19. Exercise such other powers and perform such other duties as required elsewhere by this section, the general statutes, or by the City Council; and

3.6.6.4.20. Prepare and recommend the official adoption of a preservation element as part of the city's comprehensive plan.

3.6.7. Designation of Historic District.

3.6.7.1. It is the intent of this section to make provisions within this Ordinance (i) to safeguard the heritage of the City of Kinston by preserving any area which reflects elements of its cultural, social, economic, political, or architectural history; (ii) to stabilize and improve property values in such areas; (iii) to foster civic beauty; (iv) to strengthen the local economy; and (v) to promote the use and preservation of such areas for the education, welfare, and pleasure of residents of Kinston and the state as a whole.

3.6.7.2. The City Council may designate from time to time one (1) or more historic districts within the jurisdictional boundaries of the city. No historic district(s) shall be designated until:

3.6.7.2.1. The Kinston Historic District Commission shall have made an investigation and report on the historic significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and shall have prepared a description of boundaries of such district.

3.6.7.2.2. The Kinston Historic District Commission shall have requested an analysis and recommendations based on the report required in Section 3.6.7.2.1 from the North Carolina Department of Cultural Resources, including the proposed boundaries of the district. If the department shall not have provided the requested analysis and recommendations within thirty (30) days after a written request for such analysis and recommendations have been mailed to it, the City Council is relieved of any responsibility for securing such analysis and recommendations and may at any time thereafter take any necessary action to adopt or amend its unified development ordinance.

3.6.7.2.3. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision (2) of NCGS 160A-400.4.

3.6.7.2.4. On receipt of these reports and recommendations, the city may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate unified development ordinance provisions.

ARTICLE 4.
LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

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ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

SECTION 4.1 AMENDMENT/REZONING PROCEDURES.

4.1.1. Procedure.

The City Council may amend, supplement, or change the text of this Ordinance and zoning map following review and recommendation of the Planning Board according to the procedures established in this Article. Amendments to this Ordinance shall not be applicable or enforceable without the written consent of the owner with regard to a multi-phase development as defined in Appendix A. A multi-phase development shall be vested for the entire development with the UDO then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development. *(Amended 11/20/2017)*

4.1.2. Action by Applicant.

The following action shall be taken by the applicant:

4.1.2.1. Proposed changes or amendments may be initiated by the City Council, Planning Board, or by one or more interested parties.

4.1.2.2. An application for any change or amendment shall contain a description and statement of the present and proposed zoning regulation or district boundary to be applied, the names and addresses of the applicant, the owner of the parcel of land involved in the change if different from the applicant, and all adjacent property owners as shown on the Lenoir County tax listing. One (1) hard copy and one (1) electronic copy of such application shall be filed with the UDO Administrator not later than thirty (30) calendar days prior to the Planning Board meeting at which the application is to be considered.

The UDO Administrator shall not accept an application for rezoning on the same property more than once in a twelve-month period unless the following conditions exist:

4.1.2.2.1. Materially changed conditions;

4.1.2.2.2. Clerical error was the basis for the denial of the previous rezoning request;

4.1.2.2.3. Newly discovered evidence of adverse impact of the current zoning which by due diligence could not have been discovered in time for the earlier hearing; or

4.1.2.2.4. Substantially changed rezoning request.

The twelve-month period shall commence on the date a rezoning request is denied by the City Council.

4.1.2.3. When a proposed amendment is initiated by individuals or parties other than the City Council or Planning Board, a fee established by the City Council shall be paid to the city for each application for an amendment to cover the necessary administrative costs and advertising.

If the UDO Administrator determines that the development for which a rezoning is requested will have or may have substantial impact on surrounding properties, he may require that the applicant conduct an informational meeting prior to Planning Board consideration to discuss the impacts of the proposed rezoning with the adjoining property owners. The purpose of the information meeting is to involve those property owners most likely impacted by a proposed project in the early steps of the development process. Consequently, the information meeting should be held prior to the public hearing date established for the rezoning request.

4.1.3. Action by the Planning Board.

The Planning Board shall advise and comment on whether the proposed text amendment or map amendment is consistent with the adopted comprehensive plan and any other applicable officially adopted plans. The Planning Board shall provide a written recommendation with staff report to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the City Council. The statement of consistency must specifically state why the proposed amendment is consistent or inconsistent with the Comprehensive Plan. In its deliberations, the Planning Board shall provide the public an opportunity to comment on consistency with the Comprehensive Plan. *(Amended 11/20/2017)*

4.1.4. Action by the City Council.

Action to consider a rezoning petition, including the scheduling of a public hearing, will be at the discretion of the City Council.

4.1.4.1. Notice and Public Hearings - Zoning Text Amendment. No amendment shall be adopted by the City Council until after public notice and hearing. Notice of such a public hearing shall be published once a week for two successive calendar weeks in a local newspaper of general circulation in the city.

4.1.4.2. Notice and Public Hearings - Zoning Map Amendment.

4.1.4.2.1. In any case where the City Council will consider a change in the zoning classification of a parcel of land, notice of the proposed petition or application shall be mailed by first class mail to the owner of that parcel of land and all abutting property owners as shown on the Lenoir County tax listing at the last addresses listed for such property owners on the Lenoir County tax abstracts. The party applying for the change in zoning classification shall submit, with the request for rezoning, a list of the names of the owners, their addresses and the tax parcel numbers of the property involved in the change and all properties any portion of which is within two hundred (200) feet of the property to be considered for rezoning, as shown on the Lenoir County tax listing. The application shall be considered incomplete without such material.

4.1.4.2.2. At least ten but no more than 25 calendar days prior to the date of the meeting at which the City Council will consider the request for rezoning, the City Clerk shall mail a letter of notification in the supplied envelopes containing a description of the request and the time, date and location of the public hearing. Additionally, the site proposed for rezoning or an adjacent public right-of-way shall be posted with a notice of the public hearing not less than ten calendar days prior to the City Council meeting at which the rezoning is to be considered. When multiple parcels are included in a proposed zoning map amendment, a posting of each individual site is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons. The City Clerk shall certify to the City Council that such notices have been made and such certification shall be deemed conclusive in the absence of fraud.

4.1.4.2.3. The first class mail notice required under subsections 4.1.4.2.1 and 4.1.4.2.2 of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice. In this instance, the city may elect to either make the mailed notice provided for in this section or may as an alternative elect to publish a notice of the hearing as required by NCGS 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent Lenoir County property tax listing for the affected property, shall be notified according to the provisions of subsections 4.1.4.2.1 and 4.1.4.2.2.

4.1.4.3. Recommendations of Planning Board. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation and staff report on each proposed zoning amendment must be received by the City Council. If no recommendation is received from the Planning Board within 60 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the City Council without a recommendation from the Planning Board. However, the Planning Board may request the City Council to delay final action on the amendment until such time as the Planning Board can present its recommendations. *(Amended 11/20/2017)*

4.1.4.3.1. After receiving a recommendation from the Planning Board on a proposed amendment, the City Council may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

4.1.4.3.2. The City Council is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.

4.1.4.3.3. No member of the City Council shall vote on any zoning map amendment or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact on the member.

4.1.4.3.4. Prior to adopting or rejecting any zoning amendment, the City Council shall adopt a statement describing whether the action is consistent with the adopted comprehensive plan and any other applicable officially adopted plans and explaining why the City Council considers the action taken to be reasonable and in the public interest. The statement of consistency must specifically state why the proposed amendment is consistent or inconsistent with the Comprehensive Plan. The Planning Board and staff recommendations must be recorded in the City Council minutes of the meeting at which Council action was taken. *(Amended 11/20/2017)*

4.1.4.3.5. The City Council shall adopt a statement of reasonableness for all small scale re-zonings as defined by the state statutes.

4.1.4.3.6. In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the City Council is whether the proposed amendment advance the public health, safety, or welfare. All other issues are irrelevant and all information related to other issues at the public hearing may be declared irrelevant by the Mayor and excluded. When considering proposed map amendments:

4.1.4.3.6.1. The City Council shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the City Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.

4.1.4.3.6.2. The City Council shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

4.1.4.4. Citizen Comments. Zoning ordinances may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the Clerk to the Board at least two business days prior to the proposed vote on such change, the Clerk to the Board shall deliver such written statement to the City Council. If the proposed change is the subject of a quasi-judicial proceeding under NCGS 160A-388, the Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the Council shall not disqualify any member of the Council from voting. *(Amended 11/20/2017)*

4.1.4.5. Statement of Consistency. Prior to adopting or rejecting any zoning text and/or map amendment, the City Council shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the City Council considers the action taken to be reasonable and in the public interest. This statement is not subject to judicial review.

4.1.5. Withdrawal of Application.

An applicant may withdraw his or her application at any time by written notice to the UDO Administrator and may resubmit at a subsequent date in compliance with the submittal schedule contained herein.

SECTION 4.2 ESTABLISHMENT OF VESTED RIGHTS.

4.2.1. A vested right shall be established upon the approval or conditional approval of a site-specific development plan by the City Council in accordance with the provisions outlined in this section. A right which has been vested as provided for in this section shall, as a general rule, remain valid for two (2) years and shall attach to and run with the land. The two (2) years may be extended up to five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the city.

4.2.2. Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this subsection shall have the meaning indicated when used in this section.

4.2.2.1. Landowner. Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site-specific development plan.

4.2.2.2. Property. All real property subject to the regulations and restrictions of this Ordinance as well as the zoning district boundaries established by this Ordinance and depicted on the official zoning map.

4.2.2.3. Site-Specific Development Plan. A site-specific development plan which has been submitted to the City of Kinston by a landowner describing in detail the type and intensity of use for a specific parcel or parcels of property. Such plan shall be in the form of a site plan required to obtain a conditional use permit and shall include the information required by Section 4.5.2 and Section 5.6.4. All site-specific development plans shall be approved by the City Council.

4.2.2.4. Vested Right. The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

4.2.3. A vested right shall be deemed established upon the effective date of approval by the City Council of a site-specific development plan. Following the approval of a site-specific development plan, the UDO Administrator shall issue a vested right certificate to the landowner which indicates the duration of the vesting period, the conditions, if any, imposed on the approval of the site-specific development plan, and any other information determined by the UDO Administrator to be necessary to administer the vested right.

4.2.4. A vested right shall confer upon the landowner the right to undertake and complete the development and use of the property as delineated in the approved site-specific development plan. The City Council may approve a site-specific development plan upon such terms and conditions as may be determined necessary to protect the public health, safety, and welfare. Failure to comply with the approved terms and conditions shall result in a forfeiture of vested rights.

4.2.5. Approval by the City Council of a site-specific development plan shall follow the procedural requirements for the issuance of a conditional use permit as outlined in Section 4.5. Changes in or modifications to an approved site-specific development plan shall be made only with the concurrence of the City Council in accordance with the provisions of Section 4.5.8.

4.2.6. A vested right obtained under this section runs with the land and is valid for two (2) years from the effective date of approval by the City Council of a site-specific development plan. A vested right shall not be extended by any amendments or modifications to an approved site-specific development plan unless expressly provided for by the City Council. A vested right shall expire at the end of two (2) years if no building permit applications have been filed with the city to construct the use or uses proposed in the approved site-specific development plan. If building permits are issued, the provisions of GS 160A-418 and GS 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the lack of progress during the two-year vesting period.

4.2.7. A vested right, once established or provided for in this section, precludes any zoning action by the city which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in this approved site-specific development plan, except:

4.2.7.1. With the written consent of the affected landowner;

4.2.7.2. Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific development plan;

4.2.7.3. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the city, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;

4.2.7.4. Upon findings, by ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the city of the site-specific development plan; or

4.2.7.5. Upon the enactment or promulgation of a state or federal law or regulation which precludes development as contemplated in the site-specific development plan, in which case the city may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a public hearing.

4.2.8. The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the city, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.

4.2.9. Notwithstanding any provisions of this section, the establishment of a vested right shall not preclude, change, or impair the authority of the city to enforce provisions of this Ordinance governing nonconforming situations or uses.

4.2.10. A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site-specific development plan, all successors to the original landowner shall be entitled to exercise such vested rights.

4.2.11. The city shall not require a landowner to waive his vested rights as a condition of developmental approval.

SECTION 4.3 MORATORIUM.

4.3.1. Temporary Moratorium.

The city may adopt temporary moratoria on any city development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of NCGS 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any

project for which a valid building permit issued pursuant to NCGS 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to NCGS 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the city prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

4.3.2. Ordinance Establishing a Development Moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

4.3.2.1. A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.

4.3.2.2. A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

4.3.2.3. An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

4.3.2.4. A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

4.3.3. Renewal or Extension of Moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the city in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subsections 4.3.2.1 through 4.3.2.4, including what new facts or conditions warrant the extension.

4.3.4. Persons Aggrieved by Imposition of Moratorium.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the city shall have the burden of showing compliance with the procedural requirements of this section.

SECTION 4.4 APPEALS, VARIANCES, AND INTERPRETATIONS.

4.4.1. Appeals.

4.4.1.1. Any person who has standing under GS 160A-393(d) or the city may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the City Clerk. The notice of appeal shall state the grounds for the appeal. A notice of appeal shall be considered filed with the City Clerk when delivered to the City Hall, and the date and time of filing shall be entered on the notice by the city staff.

4.4.1.2. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

4.4.1.3. The owner or other party shall have thirty (30) days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

4.4.1.4. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words ■Zoning Decision• or ■Subdivision Decision• in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property for at least ten (10) days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

4.4.1.3. The official who made the decision shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

4.4.1.4. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause immediate peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting permit or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations, the appellant may request and the Board of Adjustment may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

4.4.1.6. Subject to the provisions of subsection 4.4.1.5, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

4.4.1.5. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board of Adjustment shall continue the hearing. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board of Adjustment shall have all the powers of the official who made the decision.

4.4.1.6. When hearing an appeal pursuant to GS 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in GS 160A-393(k).

4.4.1.7. The parties of an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The Ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

4.4.2. Variances.

4.4.2.1. An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the UDO Administrator. Applications shall be handled in the same manner as applications for permits.

4.4.2.2. When unnecessary hardships would result from carrying out the strict letter of the UDO, the Board of Adjustment shall vary any of the provisions of the Ordinance upon a showing of all of the following:

4.4.2.2.1. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

4.4.2.2.2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

4.4.2.2.3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

4.4.2.2.4. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured and substantial justice is achieved.

4.4.2.3. No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

4.4.2.4. The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

4.4.3. Interpretations.

4.4.3.1. The Board of Adjustment is authorized to interpret the zoning map and to act upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the UDO Administrator, they shall be handled as provided in Section 4.4.1.

4.4.3.2. An application for a map interpretation shall be submitted to the Board of Adjustment by filing an appeal form with UDO Administrator. The application shall contain sufficient information to enable the Board of Adjustment to make the necessary interpretation.

4.4.3.3. Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the rules of interpretation as specified in Section 2.5 shall be applied. Where uncertainties continue to exist after application of the above rules, appeal may be taken to the Board of Adjustment as provided in Section 4.4.1 of this Ordinance.

4.4.3.4. Interpretations of the location of floodway and floodplain boundary lines may be made by the UDO Administrator as provided in Article 9, Part IX.

4.4.4. Requests to be Heard Expeditiously.

As provided in Article 3, the Planning Board and Board of Adjustment (as applicable) shall hear and decide all applications, appeals, variance requests, and requests for interpretations, including map boundaries, as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Section 4.4.6, and obtain the necessary information to make sound decisions.

4.4.5. Hearing Required on Appeals, Variances, and Interpretations.

4.4.5.1. Before making a decision on an appeal or an application for a variance or interpretation, the Board of Adjustment shall hold a hearing on the appeal or application within thirty (30) days of the submittal of a completed appeal or application.

4.4.5.2. Subject to subsection 4.4.5.3, the hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments. All persons presenting evidence or arguments shall be sworn in prior to the presentation of any evidence or arguments. The oath may be administered by the Chairperson, any member acting as Chairperson, or the Clerk to the Board.

4.4.5.3. The Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

4.4.5.4. The Board of Adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six weeks or more elapses between hearing dates.

4.4.5.5. The required application fee and all supporting materials must be received by the UDO Administrator before an application is considered complete and a hearing scheduled.

4.4.6. Notice of Hearing.

The UDO Administrator shall give notice of any hearing required by Section 4.4.5 as follows:

4.4.6.1. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this Ordinance. In the absence of evidence to the contrary, the city may relay on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

4.4.6.2. In the case of conditional use permits, notice shall be given to other potentially interested persons by publishing a notice in a newspaper having general circulation in the area one (1) time not less than ten (10) nor more than twenty-five (25) days prior to the hearing.

4.4.6.3. The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

4.4.7. Burden of Proof in Appeals and Variances.

4.4.7.1. When an appeal is taken to the Board of Adjustment in accordance with Section 4.4.1, the UDO Administrator shall have the initial burden of presenting to the Board of Adjustment sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

4.4.7.2. The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 4.4.2.2, as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

4.4.8. Board of Adjustment Action

The concurring vote of four-fifths of the Board of Adjustment shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority.

4.4.9. Evidence/Presentation of Evidence.

4.4.9.1. The provisions of this section apply to all hearings for which a notice is required by Section 4.4.6.

4.4.9.2. All persons who intend to present evidence to the decision-making board shall be sworn in by the Chairperson. The Chairperson of the Board or any member acting as Chairperson and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the decision-making board, willfully swears falsely is guilty of a Class 1 misdemeanor. *(Amended 11/20/2017)*

4.4.9.3. All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (necessary findings) shall be based upon competent, material, and substantial evidence. The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible

under the rules of evidence as applied in the trial division of the General Court of Justice if (1) the evidence was admitted without objection or (2) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

4.4.9.3.1. The use of property in a particular way would affect the value of other property.

4.4.9.3.2. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

4.4.9.3.3. Matters about which only expert testimony would generally be admissible under the rules of evidence. *(Amended 11/20/2017)*

4.4.9.4. The entirety of a quasi-judicial hearing and deliberation shall be conducted in open session.

4.4.9.5. Parties to a quasi-judicial hearing have a right to cross-examine witnesses.

4.4.9.6. Factual findings must not be based on hearsay evidence which would be inadmissible in a court of law.

4.4.9.7. If a member of the decision-making board has prior or specialized knowledge about a case, that knowledge should be disclosed to the rest of the decision-making board and parties at the beginning of the hearing. *(Amended 11/20/2017)*

4.4.9.8. The decision-making board through the Chairperson, or in the Chairperson's absence, anyone acting as the Chairperson may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under GS 160A-393(d) may make a written request to the Chairperson explaining why it is necessary for certain witnesses or evidence to be compelled. The Chairperson shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chairperson shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chairperson may be appealed to the full decision-making board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the decision-making board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be

obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. *(Amended 11/20/2017)*

4.4.10. Modification of Application at Hearing.

4.4.10.1. In response to questions or comments made in sworn testimony at the hearing, the applicant may agree to modify his application, including the plans and specifications submitted.

4.4.10.2. Unless such modifications are so substantial or extensive that the decision-making board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the decision-making board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the UDO Administrator. *(Amended 11/20/2017)*

4.4.11. Record.

4.4.11.1. A record shall be made of all hearings required by Section 4.4.5 and such recordings shall be kept as provided by state law. Minutes shall also be kept of all such proceedings. A transcript may be made, but is not required. *(Amended 11/20/2017)*

4.4.11.2. Whenever practicable, all documentary evidence, including any exhibits, presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the city in accordance with NCGS 160A-393(I). *(Amended 11/20/2017)*

4.4.12. Quasi-Judicial Decision.

The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board♣s determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision within the Clerk to the Board or such other office or official as this Ordinance species. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

SECTION 4.5 CONDITIONAL USE PERMITS.

4.5.1. Purpose and Applicability.

This Ordinance provides for a number of uses to be located by right in each general zoning district subject to the use meeting certain area, height, yard, and off-street parking and loading requirements. In addition to these uses, this Ordinance allows some uses to be allowed in these districts as a conditional use subject to issuance of a conditional use permit by the City Council upon recommendation of the Planning Board. City Council consideration of conditional use permits are quasi-judicial decisions. The purpose of having the uses being conditional is to ensure that they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located and would meet other criteria as set forth in this section. All conditional use permits require some form of a site plan as outlined in Section 5.6.4. *(Amended 11/20/2017)*

4.5.2. Application Process/Completeness.

4.5.2.1. The deadline for which a conditional use permit application shall be filed with the UDO Administrator is twenty (20) calendar days prior to the meeting at which the application will be heard. Permit application forms shall be provided by the UDO Administrator. In the course of evaluating the proposed conditional use, the Planning Board or City Council may request additional information from the applicant. A request for any additional information may stay any further consideration of the application by the Planning Board or City Council.

4.5.2.2. No application shall be deemed complete unless it contains or is accompanied by a site plan drawn to scale which complies with the requirements contained in Section 5.6.4 and a fee, in accordance with a fee schedule approved by the City Council for the submittal of conditional use permit applications.

4.5.2.3. One (1) hard copy of the application, and all attachments and maps, for a conditional use permit shall be submitted to the UDO Administrator.

4.5.3. Planning Board Review and Comment.

4.5.3.1. The Planning Board may, in its review, suggest reasonable conditions to the location, nature, and extent of the proposed use and its relationship to surrounding properties, parking areas, driveways, pedestrian and vehicular circulation systems, screening and landscaping, timing of development, and any other conditions the Planning Board may find appropriate. The conditions may include dedication of any rights-of-way or

easements for streets, water, sewer, or other public utilities necessary to serve the proposed development.

4.5.3.2. The Planning Board shall forward its recommendation to the City Council within 45 days of reviewing the application. If a recommendation is not made within 45 days, the application shall be forwarded to the City Council without a recommendation from the Planning Board.

4.5.3.3. All comments prepared by the Planning Board shall be submitted by a Planning Board representative to the City Council as testimony at the public hearing required by this section. This representative of the Planning Board shall be subject to the same scrutiny as other witnesses. Review of the conditional use application by the Planning Board shall not be a quasi-judicial procedure. The Planning Board shall include in its comments a statement as to the consistency of the application with the city♣s currently adopted Comprehensive Plan. Comments of the Planning Board may be considered with other evidence submitted at the public hearing.

4.5.4. City Council Action.

4.5.4.1. City Council consideration of conditional use permits are quasi-judicial decisions approved by a simple majority vote. Quasi-judicial decisions must be conducted in accordance with Sections 4.4.9 through 4.4.12. For the purposes of this section, vacant positions on the City Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered ■members of the Council• for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

4.5.4.2. Once the comments of the Planning Board have been made, or the 45-day period elapses without a recommendation, the City Council shall hold a public hearing to consider the application at its next regularly scheduled meeting. A quorum of the City Council is required for this hearing. Notice of the public hearing shall be as specified in Section 4.4.6. *(Amended 11/20/2017)*

4.5.4.3. In approving an application for a conditional use permit in accordance with the principles, conditions, safeguards, and procedures specified herein, the City Council may impose reasonable and appropriate conditions and safeguards upon the approval. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the City Council. Conditions and safeguards imposed under this subsection shall not include requirements for which the city does not

have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the city. *(Amended 11/20/2017)*

4.5.4.4. The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions which subsection 4.5.4.5 below requires.

4.5.4.5. The City Council shall issue a conditional use permit if it has evaluated an application through a quasi-judicial process and determined that:

4.5.4.5.1. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.

4.5.4.5.2. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor diminish or impair property values within the neighborhood.

4.5.4.5.3. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

4.5.4.5.4. The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.

4.5.4.5.5. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.

4.5.4.5.6. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

4.5.4.5.7. The conditional use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.

4.5.4.5.8. Public access shall be provided in accordance with the recommendations of the city's land use plan and access plan or the present amount of public access

and public parking as exists within the city now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.

4.5 4.5.9. The proposed use shall be consistent with recommendation and policy statements as described in the adopted land use plan.

4.5.4.6. Conditions and Guarantees. Prior to the granting of any conditional use, the Planning Board may recommend, and the City Council may require, conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the conditional use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified above. In all cases in which conditional uses are granted, the City Council shall require guarantees as specified in Section 5.7.4.7.1.1 or 5.7.4.7.1.2 to ensure compliance with the conditional use permit conditions. The reasons/justifications for conditions must be stated/tied to Section 4.5.4.5. *(Amended 11/20/2017)*

4.5.4.7. In the event that a rezoning is sought in conjunction with a conditional use permit, such deliberation would be legislative in nature and not part of the quasi-judicial process.

4.5.5. Effect of Approval.

If an application for a conditional use permit is approved by the City Council, the owner of the property shall have the ability to develop the use in accordance with the stipulations contained in the conditional use permit, or develop any other use listed as a permitted use for the general zoning district in which it is located.

4.5.6. Binding Effect.

Any conditional use permit so authorized shall be binding to the property included in the permit unless subsequently changed or amended by the City Council.

4.5.7. Certificate of Occupancy.

No certificate of occupancy for a use listed as a conditional use shall be issued for any building or land use on a piece of property which has received a conditional use permit for the particular use unless the building is constructed or used, or the land is developed or used, in conformity with the conditional use permit approved by the City Council. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

4.5.8. Change in Conditional Use Permit.

An application to materially change a conditional use permit once it has been issued must first be submitted, reviewed, and approved in accordance with Section 4.5.3 and 4.5.4, including payment of a fee in accordance with the fee schedule approved by the City Council.

4.5.9. Additional Requirements on Conditional Use Permits.

4.5.9.1. Subject to subsection 4.5.9.2, in grant a conditional use permit, the City Council may attach to the permit such reasonable requirements in addition to those specified in this Ordinance as will ensure that the development in its proposed location:

4.5.9.1.1. Will not endanger the public health or safety;

4.5.9.1.2. Will not injure the value of adjoining or abutting property;

4.5.9.1.3. Will be in harmony with the existing development and uses within the area in which it is to be located; and

4.5.9.1.4. Will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the City Council.

4.5.9.2. The City Council may not attach additional conditions that modify or alter the specific requirements set forth in this Ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.

4.5.9.3. Without limiting the foregoing, the City Council may attach to a permit a condition limiting the permit to a specified duration.

4.5.9.4. All additional comments or requirements shall be entered on the permit.

4.5.9.5. All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirements of this Ordinance.

4.5.10. Implementation of Conditional Use Permit.

A conditional use permit, after approval by the Planning Board and City Council shall expire six months after the approval date if work has not commenced or in the case of a change of occupancy the business has not opened; however, it may be, on request, continued in effect for a period not

to exceed six months by the UDO Administrator. No further extension shall be added except on approval of the City Council. If such use or business is discontinued for a period of 12 months, the conditional use permit shall expire. Any expiration as noted or any violation of the conditions stated on the permit shall be considered unlawful and the applicant will be required to submit a new conditional use application to the appropriate agencies for consideration and the previously approved conditional use permit shall become null and void.

SECTION 4.6 EXPIRATION OF PERMITS.

4.6.1. Zoning and conditional use permits shall expire automatically if, within one (1) year after the issuance of such permits:

> ***4.6.1.1.*** The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or
>
> ***4.6.1.2.*** Less than ten (10) percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development, this requirement shall apply only to the first phase.

4.6.2. If after some physical alteration to land or structures begins and such work is discontinued for a period of one (1) year, then the zoning or conditional use permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 4.7.

4.6.3. The permit-issuing authority may extend for a period up to six (6) months the date when a zoning or conditional use permit would otherwise expire pursuant to subsections 4.6.1 or 4.6.2 if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to six (6) months (for a total period not to exceed two (2) years) upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

4.6.4. For purposes of this section, the conditional use permit within the jurisdiction of the board of adjustment is issued when such board votes to approve the application and issue the permit. A zoning permit within the jurisdiction of the zoning administrator is issued when the earlier of the following takes place:

4.6.4.1. A copy of the fully executed permit is delivered to the permit recipient and delivery is accomplished when the permit is hand delivered or mailed to the permit applicant; or

4.6.4.2. The UDO Administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded if required.

4.6.5. Notwithstanding any of the provisions of Article 8 (Nonconforming Situations), this section shall be applicable to permits issued prior to the date this section becomes effective.

4.6.6. Conditional use permits shall expire at the end of the two-year vesting period established in accordance with Section 4.2, Vested Right.

SECTION 4.7 EFFECT OF PERMIT ON SUCCESSORS AND ASSIGNS.

4.7.1. Zoning and conditional use permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

4.7.1.1. No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and

4.7.1.2. The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued, so long as the persons who subsequently obtain an interest in the property had actual or record notice (as provided in subsection 4.7.2) of the existence of the permit at the time they acquired their interest.

4.7.2. Whenever a special use or conditional use permit is issued to authorize development (other than single-family or two-family residences) on a tract of land in excess of one (1) acre, nothing authorized by the permit may be done until the record owner of the property signs a written

acknowledgment that the permit has been issued so that the permit may be recorded in the Lenoir County Registry and indexed under the record owner's name as grantor.

SECTION 4.8 REHEARINGS.

When an application involving a quasi-judicial procedure/petition is denied by the City Council or Board of Adjustment, reapplication involving the same property, or portions of the same property, may not be submitted unless the petitioner can demonstrate a substantial change in the proposed use, conditions governing the use of the property, or conditions surrounding the property itself.

SECTION 4.9 APPEALS OF QUASI-JUDICIAL DECISIONS.

4.9.1. Every quasi-judicial decision shall be subject to review by the Superior Court of Lenoir County by proceedings in the nature of certiorari pursuant to GS 160A-393.

4.9.2. A petition for review shall be filed with the Lenoir County Clerk of Superior Court by the later of thirty (30) days after the decision is effective or after a written copy thereof is given in accordance with Section 4.4.12. When first class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

4.9.3. A copy of the writ of certiorari shall be served upon the City of Kinston.

ARTICLE 5.
DEVELOPMENT REVIEW PROCESS

Section 5.1 Applicability 5-2
Section 5.2 Pre-Application Meeting and Sketch Plan 5-3
Section 5.3 Administrative Approval - Minor Site Plan or Minor Subdivision 5-4
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ARTICLE 5. DEVELOPMENT REVIEW PROCESS

SECTION 5.1 APPLICABILITY.

5.1.1. The purpose of this Article is to establish an orderly process to develop land within the City of Kinston. It is also the intent of this Article to provide a clear and comprehensible development process that is fair and equitable to all interests including the petitioners, affected neighbors, city staff, related agencies, the Planning Board, and the City Council. Approved plans shall be the guiding documents for final approval and permitting.

5.1.2. The development review process applies to all development actions within the planning jurisdiction except for existing individual lots for single-family detached residential and two-family residential (duplex) development. The provisions of this Article shall be applicable for all Minor and Major Subdivisions and Minor and Major Site Plans. The UDO Administrator may waive the required development review process only in the following cases when he determines that the submission of a development plan in accordance with this Article would serve no useful purpose:

5.1.2.1. Accessory structures.

5.1.2.2. Any enlargement of a principal building by less than 20% of its existing size provided such enlargement will not result in parking or landscaping improvements.

5.1.2.3. A change in principal use where such change would not result in a change in lot coverage, parking, or other site characteristics.

5.1.3. If a permit applicant submits a permit application for any type of development and a rule or ordinance changes between the time the permit application was submitted and a permit decision is made, the permit applicant may choose which version of the rule or ordinance will apply to the permit. *(Amended 11/20/2017)*

5.1.4. The city may enter into a development agreement with a developer for the development of property as provided in this section for developable property of any size, including property that is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the NC General Statutes. Development agreements shall be of a reasonable term specified in the agreement. *(Amended 11/20/2017)*

SECTION 5.2 PRE-APPLICATION MEETING AND SKETCH PLAN.

5.2.1. The applicant shall schedule a pre-application meeting with the UDO Administrator to review a Sketch Plan of the proposed development, including minor and major subdivisions and minor and major site plans. The Sketch Plan shall meet the requirements of Section 5.2.3. The UDO Administrator will advise the applicant of all applicable city regulations and policies, suggest development alternatives, application procedures, and fees (see Section 2.8). The pre-application meeting is a non-binding and informal review of a development proposal intended to provide information to the applicant on the procedures and policies of the City of Kinston and does not confer upon the applicant any development rights. The UDO Administrator may submit a Sketch Plan to other departments or agencies for input and recommendations. Within fifteen (15) days of receipt of the sketch plan, the UDO Administrator shall forward all appropriate comments to the applicant. This timeframe may be extended if comments are requested from other agencies.

5.2.2. The applicant is encouraged to incorporate the recommendations of the UDO Administrator or authorized staff reviewer into the development plan before submittal. The sketch plan is only a courtesy intended to inform the applicant of the approval criteria prior to submittal of the development plan; furthermore, sketch plan review does not constitute approval of the development plan and may not be substituted for any required approvals.

5.2.3. Three copies of the sketch plan, drawn to scale, shall be submitted, including the following:

5.2.3.1. A scale, preferably the same scale as required for development plan submittal.

5.2.3.2. Property boundaries and total acreage, including NC PINs for all properties.

5.2.3.3. Major topographical and physical features such as creeks, buildings, streets, and the like.

5.2.3.4. Proposed streets, buildings, and/or lot arrangements, including proposed lot sizes.

5.2.3.5. Existing and proposed land use, drawn to scale, with brief project description including building sizes, unit sizes, lot sizes, open space, amenities, and the like.

5.2.3.6. Name, address, and telephone number of applicant and persons (firm) preparing the development plan.

5.2.3.7. Adjacent street names, numbers, and right-of-way widths.

5.2.3.8. Zoning district classification of site and surrounding properties, including those across streets.

5.2.3.9. Yard setbacks and proposed structures.

5.2.3.9. The boundaries of any proposed phasing.

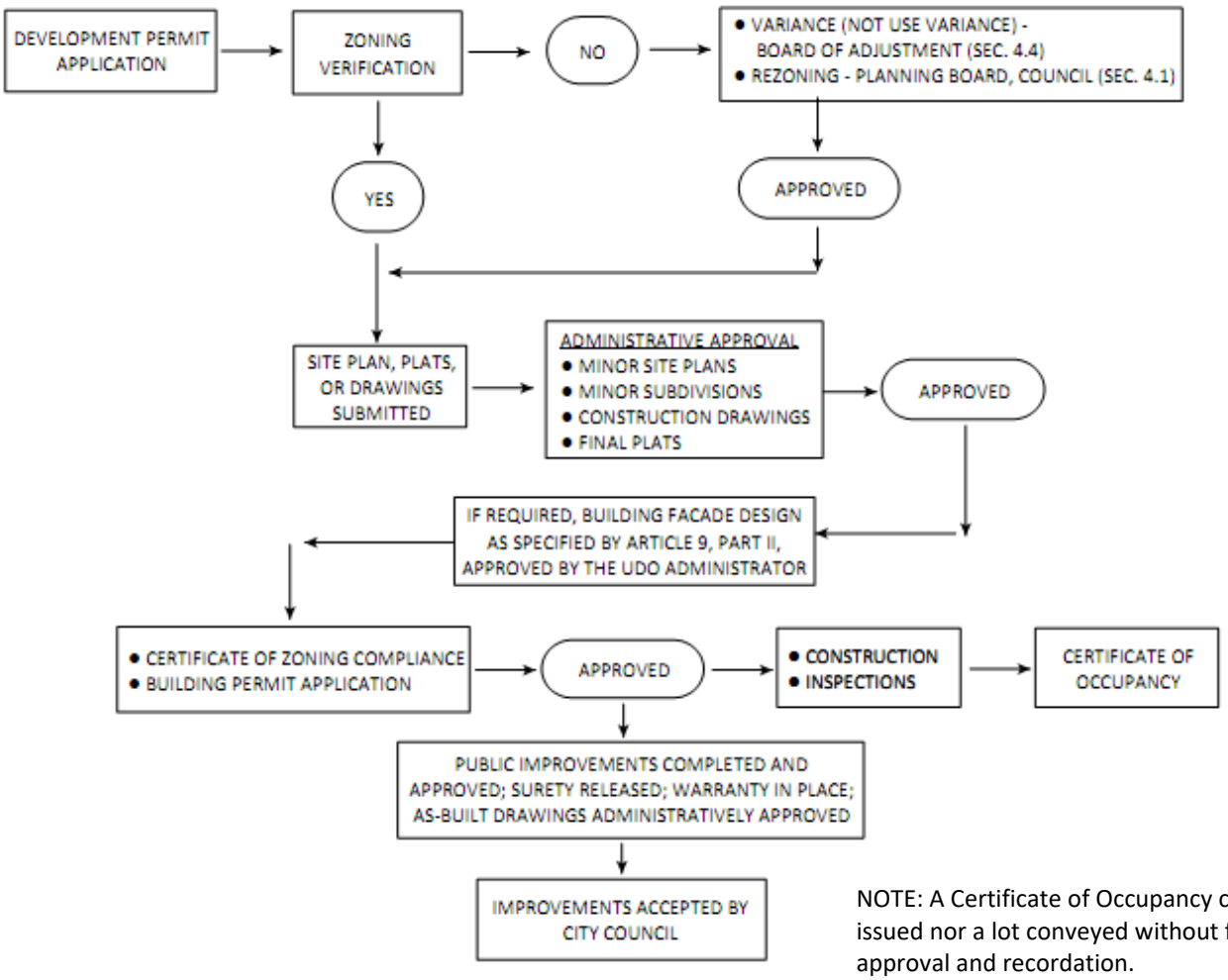
SECTION 5.3 ADMINISTRATIVE APPROVAL - MINOR SITE PLAN OR MINOR SUBDIVISION.

Administrative approval includes:

- Minor Site Plans. Include the following:
  (1) Buildings or additions with an aggregate enclosed square footage of less than 20,000 square feet;
  (2) Buildings or additions involving land disturbance of less than one (1) acre;
  (3) Multi-family development involving less than ten (10) dwelling units;
  (4) Parking lot expansions which comply with this Ordinance with no increase in enclosed floor area;
  (5) Revision to landscaping, signage, or lighting which comply with the requirements of this Ordinance;
  (6) Accessory uses which comply with the requirements of this Ordinance; and
  (7) Site plans which do not require a variance or modification of the requirements of this Ordinance, and otherwise comply with this Ordinance.
- Minor Subdivisions.
- Construction and As-Built Drawings
- Final Plats

NOTE: A sketch plan and/or pre-application meeting is not required for a final plat submittal.

5.3.1. Administrative Approval Flowchart.



NOTE: A Certificate of Occupancy cannot be issued nor a lot conveyed without final plat approval and recordation.

5.3.2. Development Permit Application/Zoning Verification.

A development permit application shall be submitted and zoning compliance verified by the UDO Administrator. If the zoning is in compliance, the applicant may proceed with submittal of site plan, plats, or drawings. If the proposed development is not zoning compliant, the applicant must request a rezoning (see Section 4.1) or a variance (see Section 4.4) before proceeding with site plan, plat, or drawing submittal.

5.3.3. Minor Site Plan, Minor Subdivision Plat, or Construction Drawings Submitted for Review.

A plan of the proposed development shall be submitted in accordance with Sections 5.5 through 5.7, and shall be accompanied by the completed application and payment of a fee as adopted by the City Council (see Section 2.8).

5.3.4. Staff Review.

The UDO Administrator may circulate the plan to relevant governmental agencies and officials. The reviewing government agencies and officials may include, but not necessarily be limited to, the following:

- UDO Administrator
- City Manager
- Police Department
- Fire Department
- Building Inspections Department
- City Engineer
- City Attorney
- Other city representatives appointed by the City Manager
- Utilities Providers
- Lenoir County Health Department
- Lenoir County Board of Education
- Eastern Carolina Rural Planning Organization
- NC Department of Transportation
- NC Department of Environment and Natural Resources
- US Army Corps of Engineers

5.3.5. Approval.

If the site plan, construction drawings, as-built drawings, or final plat is found to meet all of the applicable regulations of this Ordinance, then the UDO Administrator shall issue a zoning permit for site plans or approve final subdivision plats.

5.3.6. Appeal of Administrative Denial.

Administrative denial of an application for approval of a minor site plan, minor subdivision, construction drawings, or final plats may be appealed by the applicant to the Planning Board within thirty (30) days following written notification of denial by the UDO Administrator.

5.3.7. Certificate of Zoning Compliance.

5.3.7.1. No land shall be used or occupied and no building hereafter constructed, structurally altered, erected, or moved, shall be used, or its use changed until a certificate of zoning compliance shall have been issued by the UDO Administrator, or his designee which may include the Building Inspector, stating that the building or the proposed use thereof complies with the provisions of this Ordinance.

5.3.7.2. A certificate of zoning compliance, either for the whole or a part of a building, shall be applied for prior to the application for a building permit and shall be issued together with the building permit.

5.3.7.3. Application for Certificate of Zoning Compliance. Each application for a preliminary certificate of zoning compliance shall be accompanied by a site plan (if not already submitted in accordance with Section 5.3.3) in duplicate, drawn to scale, one copy of which shall be returned to the owner upon approval. The plan shall show the following:

5.3.7.3.1. The shape and dimensions of the lot on which the proposed building or use is to be erected or constructed.

5.3.7.3.2. The location of the lot with respect to adjacent rights-of-way.

5.3.7.3.3. The shape, dimensions, and location of all buildings, existing and proposed, on the lot.

5.3.7.3.4. The nature of the proposed use of the building or land, including the extent and location of the use on the lot.

5.3.7.3.5. The location and dimensions of off-street parking and the means of ingress and egress to the space.

5.3.7.3.6. Any other information which the UDO Administrator may deem necessary for consideration in enforcing the provisions of this Ordinance. The UDO Administrator may waive any of the above requirements which may not be applicable or otherwise deemed necessary by the UDO Administrator.

5.3.8. Building Permit Required.

5.3.8.1. No building or other structure shall be erected, moved, added to, demolished, or structurally altered without a building permit issued by the Building Inspector and a zoning permit issued by the UDO Administrator. No building permit shall be issued by the Building Inspector except in conformity with the provisions of the NC State Building Code and this Ordinance unless he or she receives a written order from the Board of Adjustment in the form of a variance to this Ordinance as provided for by this Ordinance.

5.3.8.2. Application for Building Permit. All applications for building permits shall be accompanied by plans, including a survey not more than six (6) months old, as specified by the NC State Building Code. The application shall include other information as lawfully may

be required by the Building Inspector, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, dwelling units or rental units the building is designed to accommodate; conditions existing on the lot; floodplain development permit; and any other matters as may be necessary to determine conformance with, and provide for the enforcement of this Ordinance. A minimum of two copies of the plans shall be required. One copy of the plans shall be returned to the applicant by the Building Inspector, after he shall have marked the copy either as approved or disapproved and attested to same by his signature on the copy. One copy of the plans, similarly marked, shall be retained by the Building Inspector.

5.3.9. Inspections and Certificates of Occupancy.

No new building, or part thereof, shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building after being altered or moved shall be occupied, and no change of use shall be made in any existing building or part thereof, until the Building Inspector has issued a Certificate of Occupancy.

A certificate of occupancy shall be applied for subsequent to or concurrent with the application for a certificate of zoning compliance and shall be issued within five (5) business days after the erection or structural alteration of such building or part shall have been completed in conformity with the provisions of this Ordinance. A temporary certificate of occupancy for a portion of a structure may be issued for a portion or portions of a building which may safely be occupied prior to final completion and occupancy of the entire building or for other temporary uses. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this Ordinance. If the certificate of occupancy is denied, the Building Inspector shall state in writing the reasons for refusal and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the Building Inspector for a period of time in accordance with the NC Department of Cultural Resources requirements (NCGS 132-8) and copies shall be furnished on request to any persons having a proprietary or tenancy interest in the building or land involved.

For all developments, excluding single-family residential uses, prior to the issuance of a certificate of occupancy by the Building Inspector, a final zoning inspection shall be conducted to ensure that the approved plan has been followed and all required improvements have been installed to city standards. The City Council must have accepted all publicly dedicated improvements contingent upon the recordation of the final plat or provision of performance guarantees approved by the City Council as specified in Section 5.7.4.7.

For Minor Site Plans and Minor Subdivision Final Plats, an as-built survey and as-built construction drawings shall be submitted to the UDO Administrator by the developer upon completion of the building foundation(s) to ensure that setbacks and building orientation match the approved site

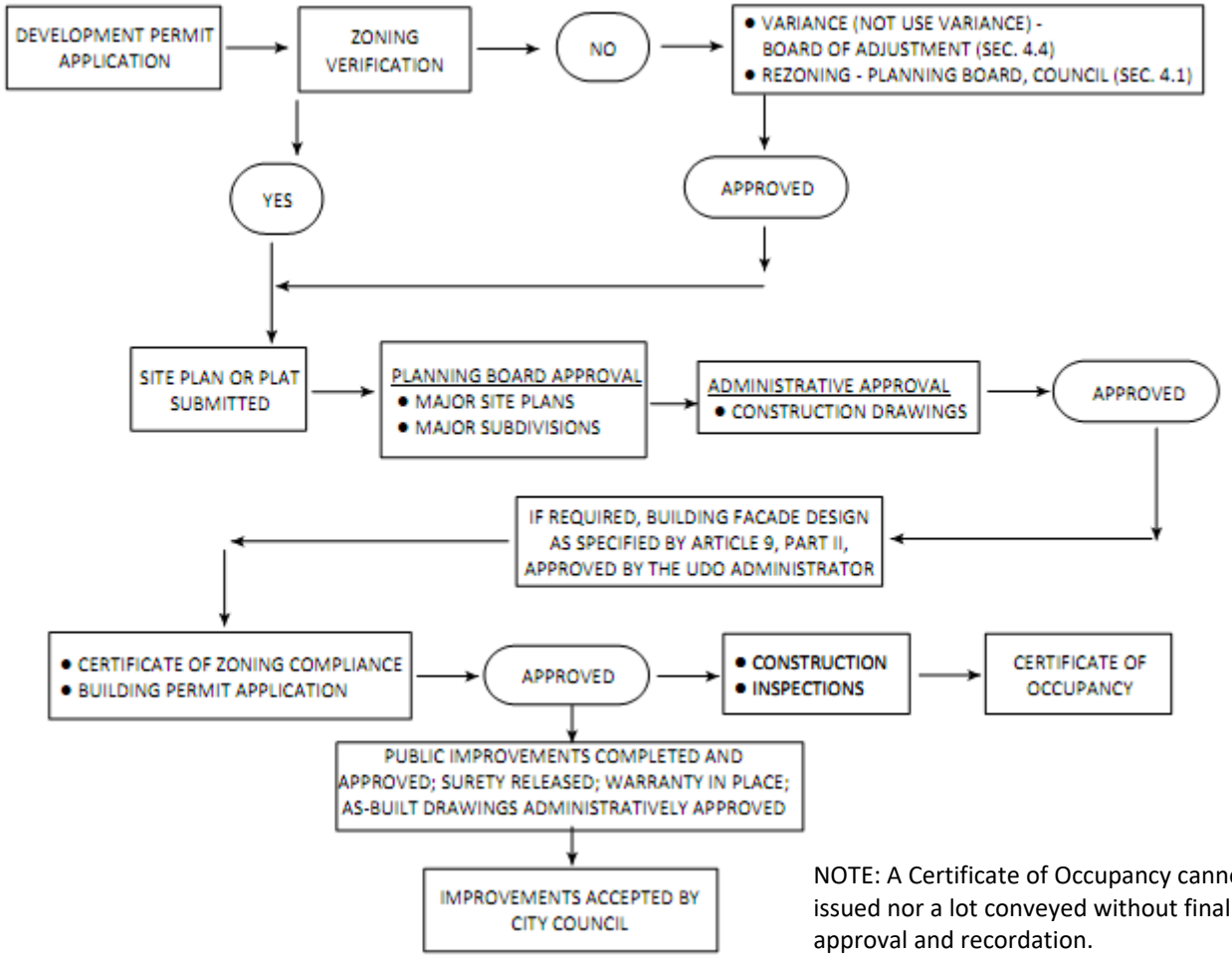
plan. If the survey shows that the placement of the building is incorrect, then the UDO Administrator shall issue a stop-work order and all construction shall be halted until the problem is remedied.

SECTION 5.4 PLANNING BOARD REVIEW AND APPROVAL - MAJOR SITE PLAN OR MAJOR SUBDIVISION.

Planning Board review and approval applies to the following:

- Major Site Plans. Includes all site plans for projects not meeting the requirements for a minor site plan.
- Major Subdivisions. Includes all subdivisions not meeting the requirements for a minor subdivision.

5.4.1. Planning Board Review and Approval Flowchart.



NOTE: A Certificate of Occupancy cannot be issued nor a lot conveyed without final plat approval and recordation.

5.4.2. Development Permit Application/Zoning Verification.

A development permit application shall be submitted and zoning compliance verified by the UDO Administrator. If the zoning is in compliance, the applicant may proceed with submittal of site plan, plats, or drawings. If the proposed development is not zoning compliant, the applicant must request a rezoning (see Section 4.1) or a variance (see Section 4.4) before proceeding with site plan, plat, or drawing submittal.

5.4.3. Major Site Plan, Major Subdivision Plat, or Construction Drawings Submitted for Review.

All major site plans and major subdivision preliminary plats shall be submitted in accordance with Sections 5.6 and 5.7, and shall be accompanied by the completed application and payment of a fee as adopted by the City Council (see Section 2.8).

5.4.4. Staff Review.

The UDO Administrator may require that the plan be circulated to relevant governmental agencies and officials for comments and recommendations. The reviewing agencies and officials may include, but not necessarily be limited to those listed in Section 5.3.4.

5.4.5. Review and Approval by the Planning Board.

5.4.5.1. Following a complete review by the staff, the UDO Administrator shall schedule the application for review by the Planning Board at the next regularly scheduled meeting.

5.4.5.2. The Planning Board shall have up to 45 days from the date of referral by the UDO Administrator to recommend approval, approval with conditions, or denial of the request. Alternatively, the Planning Board may suspend the review period for a specific number of days and request additional information of the applicant, other governmental agencies, or interested/affected parties in order to aid in the review of the request or deferral of its consideration. The submittal of additional information does not restart the initial 45-day review period.

5.4.6. Approval.

All required local, state, and/or federal permits must be obtained prior to the approval of the site plan or final plat. If the site plan or final plat is found to meet all of the applicable regulations of this Ordinance, then the UDO Administrator shall issue a zoning permit for site plans or approve final subdivision plats.

5.4.7. Appeal of Planning Board Denial.

5.4.7.1. Planning Board denial of an application for approval of a major site plan or major subdivision may be appealed by the applicant to the City Council within thirty (30) days following written notification of denial by the Planning Board.

5.4.7.2. Following denial by the Planning Board or City Council (if appealed to the City Council), the applicant may file a new application and associated fee. Unless the Planning Board/City Council explicitly states conditions that must be met prior to the resubmission of an application, the applicant shall not submit a new application for the same property within one (1) year of the date of denial by the Planning Board/City Council unless the application is significantly different from the previously denied application. All applications shall be resubmitted for full review unless the application is resubmitted to address conditions set forth by the Planning Board/City Council for reapplication.

SECTION 5.5 CONSTRUCTION DRAWING REVIEW REQUIREMENTS.

5.5.1. Applicability and Process.

The Construction Drawings for Minor Site Plans, Major Site Plans, and Major Subdivision Preliminary Plats shall be submitted with the site plan or preliminary plat. The construction drawings shall be reviewed concurrent with the site plan. Construction drawings shall be approved administratively prior to the issuance of a zoning permit.

5.5.2. Submittal Requirements.

Construction Drawings shall include the following:

- Site Plan or Preliminary Plat
- Existing Conditions
- Grading Plan
- Soil and Erosion Control Plan
- Landscaping Details
- Lighting Plan
- Street Details, if applicable
- Infrastructure Details
- Stormwater Control Plan

SECTION 5.6 SITE PLAN PROCEDURES.

5.6.1. Pre-Application Meeting and Sketch Plan.

The applicant shall schedule a pre-application meeting with the UDO Administrator to review a Sketch Plan of the proposed site plan. The UDO Administrator will determine if the plan constitutes a Minor or Major Site Plan, in accordance with the definitions in Appendix A, and advise the applicant of all applicable city regulations and policies, applications procedures, and fees.

5.6.2. Minor Site Plans.

Minor Site Plans follow the Administrative Approval process as specified in Section 5.3. Minor Site Plans shall be submitted as part of a full set of Construction Drawings. Construction Drawing approval is required prior to the issuance of a Zoning Permit. Refer to Section 5.5 Construction Drawing requirements.

5.6.3. Major Site Plans.

Major Site Plans follow the Planning Board approval process as specified in Section 5.4. The Major Site Plan shall be reviewed by the UDO Administrator for completeness, compliance with this Ordinance, and soundness of design. The plan shall then be reviewed for recommendation and approval by the Planning Board. Construction Drawing approval is required prior to the issuance of a Zoning Permit.

5.6.4. Site Plan Requirements.

5.6.4.1. Information to be Shown on Site Plan. The site plan shall be prepared by a professional engineer, registered land surveyor, or architect and shall be drawn to scale of not less than one inch equals 30 feet. The site plan shall be based on the latest tax map information and shall be of a size as required by each individual site plan. The site plan shall contain the following information:

5.6.4.1.1. A key map of the site with reference to surrounding areas and existing street locations.

5.6.4.1.2. The name and address of the owner and site plan applicant, together with the names of the owners of all contiguous land and of property directly across the street as shown by the most recent tax records.

5.6.4.1.3. Parcel Identification Numbers (PIN) for site and adjacent properties.

5.6.4.1.4. Deed book and page reference demonstrating ownership of property.

5.6.4.1.5. Lot line dimensions.

5.6.4.1.6. Location of all structures, streets, entrances, and exits on the site and on contiguous property directly across the street.

5.6.4.1.7. Location of all existing and proposed structures, including their outside dimensions and elevations.

5.6.4.1.8. Building setback, side line, and rear yard distances.

5.6.4.1.9. Location of flood zones.

5.6.4.1.10. All existing physical features, including water courses, existing trees greater than eight (8) inches in diameter measured four and one-half (4.5) feet above ground level, and significant soil conditions.

5.6.4.1.11. Topography showing existing and proposed contours at two-foot intervals. All reference benchmarks shall be clearly designated.

5.6.4.1.12. The zoning of the property, including zoning district lines where applicable.

5.6.4.1.13. Property lines of the tract to be developed (with dimensions identified), adjacent property lines (including corporate limits, city boundaries, and county lines).

5.6.4.1.14. Parking, loading, and unloading areas shall be indicated with dimensions, traffic patterns, access aisles, and curb radii per the requirements of Article 9, Part III.

5.6.4.1.15. Improvements such as roads, curbs, bumpers, and sidewalks shall be indicated with cross-sections, design details, and dimensions.

5.6.4.1.16. Location and design of existing and proposed stormwater systems, sanitary waste disposal systems, water mains and appurtenances, and method of refuse disposal and storage.

5.6.4.1.17. Underground utility lines, including water, sewer, electric power, telephone, gas, cable television.

5.6.4.1.18. Impervious surface areas with area dimensions.

5.6.4.1.19. Aboveground utility lines and other utility facilities.

5.6.3.1.20. Utility or other easement lines.

5.6.4.1.21. Fire hydrants.

5.6.4.1.22. The location and dimensions of all recreational areas.

5.6.4.1.23. The location and dimensions of all areas intended as usable open space. The plans shall clearly indicate whether such open space areas are intended to be offered for dedication to public use or to remain privately owned.

5.6.4.1.24. Landscaping and buffering plan showing what will remain and what will be planted, indicating names of plants, trees, and dimensions, approximate time of planting, and maintenance plans per the requirements of Article 9, Part I. The plan shall include the tree line of wooded areas and individual trees eighteen inches in diameter or more, identified by common or scientific name.

5.6.4.1.25. Proposed lighting.

5.6.4.1.26. Location, dimensions, and details of signs per the requirements of Article 9, Part IV.

5.6.4.1.27. Location of dumpsters and screening as required by Article 9, Part I.

5.6.4.1.28. North arrow.

5.6.4.1.29. Location of all 404 wetland areas.

5.6.4.1.30. Location of detention/retention ponds and screening as required by Article 9, Part I.

5.6.4.2. Performance Standards. In reviewing any site plan, the UDO Administrator or Planning Board, as applicable, shall consider:

5.6.4.2.1. Pedestrian and vehicular traffic movement within and adjacent to the site with particular emphasis on the provision and layout of parking areas, off-street loading and unloading, movement of people, goods, and vehicles from access roads, within the site, between buildings, and between buildings and vehicles. The Planning Board shall ensure that all parking spaces comply with Article 9, Part III. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site.

5.6.4.2.2. The design and layout of buildings and parking areas shall be reviewed so as to provide an aesthetically pleasing design and efficient arrangement. Particular attention shall be given to safety and fire protection, impact of surrounding development, and contiguous and adjacent buildings and lands.

5.6.4.2.3. Adequate lighting, based upon the standards set forth in Article 9, Part VIII shall be provided to ensure safe movement of persons and vehicles and for security purposes. Lighting standards shall be a type approved by the Planning Board.

5.6.4.2.4. Buffering shall be located around the perimeter of the site to minimize headlights of vehicles, noise, light from structures, the movement of people and vehicles, and to shield activities from adjacent properties in accordance with Article 9, Part I.

5.6.4.2.5. Landscaping shall be provided as part of the overall site design and integrated into building arrangements, topography, parking, and buffering requirements in accordance with Article 9, Part I.

5.6.4.2.6. Signs shall be designed so as to be aesthetically pleasing, harmonious with other signs on the site, and located so as to achieve their purpose without constituting hazards to vehicles and pedestrians (refer to Article 9, Part IV).

5.6.4.2.7. Storm drainage, sanitary waste disposal, water supply, and garbage disposal shall be reviewed for compliance with applicable Federal, State, and local requirements. Particular emphasis shall be given to the adequacy of existing systems, and the need for improvements, both on-site and off-site, to adequately

carry run-off and sewage, and to maintain an adequate supply of water at sufficient pressure. The storm drainage design shall not result in an increase in stormwater runoff on adjacent properties. The proposed project design shall comply with all applicable requirements and thresholds established by the NC Department of Environmental and Natural Resources (Division of Water Quality, Division of Coastal Management [CAMA], and Division of Land Quality), and the US Army Corps of Engineers.

5.6.4.2.8. Environmental elements relating to soil erosion, preservation of trees, protection of water courses, and resources, noise, topography, soil, and animal life shall be reviewed, and the design of the plan shall minimize any adverse impact on these elements.

5.6.4.2.9. All projects greater than one (1) acre are required to comply with the North Carolina Sedimentation and Erosion Control regulations. All required permits must be provided to the City of Kinston prior to project approval.

5.6.5. Certificate of Zoning Compliance/Building Permit.

An application for a certificate of zoning compliance may be requested in advance of or concurrently with an application for a building permit in accordance with Sections 5.3.7 and 5.3.8.

5.6.6. Inspections and Certificates of Occupancy.

No new building, or part thereof, shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building after being altered or moved shall be occupied, and no change of use shall be made in any existing building or part thereof, until the Building Inspector has issued a Certificate of Occupancy.

A certificate of occupancy shall be applied for subsequent to or concurrent with the application for a certificate of zoning compliance and shall be issued within five (5) business days after the erection or structural alteration of such building or part shall have been completed in conformity with the provisions of this Ordinance. A temporary certificate of occupancy for a portion of a structure may be issued for a portion or portions of a building which may safely be occupied prior to final completion and occupancy of the entire building or for other temporary uses. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this Ordinance. If the certificate of occupancy is denied, the Building Inspector shall state in writing the reasons for refusal and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the Building Inspector for a period of time in accordance with the NC Department of Cultural Resources requirements

(NCGS 132-8) and copies shall be furnished on request to any persons having a proprietary or tenancy interest in the building or land involved.

For all developments, excluding single-family residential uses, prior to the issuance of a certificate of occupancy by the Building Inspector, a final zoning inspection shall be conducted to ensure that the approved plan has been followed and all required improvements have been installed to city standards. The City Council must have accepted all publicly dedicated improvements contingent upon the recordation of the final plat or provision of performance guarantees approved by the City Council as specified in Section 5.7.4.7.

For Major Sites Plans, an as-built survey and as-built construction drawings shall be submitted to the UDO Administrator by the developer upon completion of the building foundation(s) to ensure that setbacks and building orientation match the approved site plan. If the survey shows that the placement of the building is incorrect, then the UDO Administrator shall issue a stop-work order and all construction shall be halted until the problem is remedied.

SECTION 5.7 SUBDIVISION PROCEDURES.

5.7.1. Subdivision Exceptions.

This section shall be applicable to all subdivisions except those which are exempt in accordance with Section 1.3, page 1-3. The Planning Board may authorize exceptions for subdivisions from any portion of this Ordinance when, in its opinion, undue hardship may result from their strict compliance. In granting an exception, the Planning Board shall hold a quasi-judicial public hearing and make the findings required herein, taking into account the nature of the proposed subdivision, the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. No relief shall be granted unless it is found:

5.7.1.1. That there are special circumstances or conditions affecting said property such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his land; and

5.7.1.2. That the relief is necessary for the preservation and enjoyment of a substantial property right of the petitioner; and

5.7.1.3. That the circumstances giving rise to the need for the relief are peculiar to the subdivision and are not generally characteristic of other subdivisions in the jurisdiction of this Ordinance; and

5.7.1.4. That the granting of the relief will not be detrimental to the public health, safety, and welfare or injurious to other property in the area in which said property is situated.

Every decision of the Planning Board pertaining to the granting of subdivision exceptions shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within 30 days after the decision of the Planning Board is filed in the office of the UDO Administrator, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the UDO Administrator at the time of the Planning Board's hearing of the case, whichever is later.

5.7.2. Pre-Application Meeting and Sketch Plan.

The applicant shall schedule a pre-application meeting with the UDO Administrator to review a Sketch Plan of the proposed subdivision in accordance with Section 5.2. The UDO Administrator will determine if the subdivision constitutes a Major or Minor Subdivision, in accordance with the definitions in Appendix A, and advise the applicant of all applicable city regulations and policies, application procedures, and fees.

5.7.3. Review Procedure for Minor Subdivisions.

5.7.3.1. The developer shall submit a sketch development plan, as specified in Section 5.2, to the UDO Administrator. At this stage, the UDO Administrator and the developer shall informally review the proposal.

5.7.3.2. After this initial review has been completed, the subdivider or his authorized representative shall prepare a final plat as specified in Section 9.46 and submit it to the UDO Administrator. At the time of submission, the subdivider shall pay to the city an application fee as established by the City Council in accordance with Section 2.8. Refer to Section 9.47 for plat requirements.

5.7.3.3. The UDO Administrator shall approve or disapprove the final plat. If the subdivider disagrees with the decision of the UDO Administrator, the subdivider may appeal to the Planning Board at their next regular meeting.

5.7.4. Review Procedure for Major Subdivisions.

5.7.4.1. Preliminary Plat.

5.7.4.1.1. At the time of submission of the preliminary plat, the subdivider shall pay to the city an application fee as established by the City Council in accordance with Section 2.8. Refer to Section 9.47 for plat requirements.

5.7.4.1.2. The subdivider or his or her authorized agent shall submit five (5) copies of the preliminary plat to the UDO Administrator at least 14 days prior to a regular meeting of the Planning Board. During this period, the UDO Administrator shall evaluate the plan to determine whether or not it meets the requirements of this Ordinance. The UDO Administrator may receive comments from other persons or agencies before making its final recommendations.

5.7.4.1.3. After the UDO Administrator determines that the preliminary plat meets the requirements of this Ordinance, it shall be submitted to the Planning Board for approval. The city shall prominently post a notice on the site proposed for subdivision or on an adjacent public street or highway right-of-way at least ten days prior to the Planning Board meeting. The Planning Board shall approve, approve with conditions, or disapprove the plan within 45 days after first consideration by them. When the Planning Board fails to act within the 45-day period, the subdivider may appeal directly to the City Council.

5.7.4.2. Final Plat.

5.7.4.2.1. At the time of submission of the final plat, the subdivider or his or her authorized agent shall pay the city an application fee as established by the City Council in accordance with Section 2.8. Refer to Section 9.47 for plat requirements.

5.7.4.2.2. Within 24 months after approval of the preliminary plat by the Planning Board, the subdivider shall submit a final plat showing that he or she has completed the subdivision according to the preliminary plan. The final plat may include all or only a portion of the subdivision as proposed and approved on the preliminary subdivision plat, provided that all required improvements have been installed as called for in the approved preliminary plat or a surety bond or similar financial instrument has been approved by the City Council, in accordance with Section 5.7.4.7 for the subdivision. The UDO Administrator shall determine whether or not the final plat substantially agrees with the approved preliminary plan. If substantial

differences exist, the UDO Administrator may deny the final plat and require that a new preliminary plat be submitted. If the plat substantially agrees with the preliminary plat, the UDO Administrator shall approve the final plat within thirty (30) days after first consideration, if the City Council has accepted the publicly dedicated improvements or approved a performance bond. Only after the final plat has been approved and recorded at the Lenoir County Register of Deeds office shall any lots be transferred or conveyed. The plat must be recorded within 30 days after approval.

5.7.4.2.3. Five (5) copies of the final plat shall be submitted: the original, two mylar copies, and two blueline paper copies. The mylar shall be three ml., suitable for reproduction. The three reproducible copies shall each have original signature. The original copy shall be returned to the subdivider, one mylar copy shall be recorded at the Lenoir County Register of Deeds office, and one mylar copy of the recorded plat shall be returned to the UDO Administrator.

5.7.4.2.4. The final plat shall be prepared by a surveyor licensed and registered to practice in the state. It shall conform to the provisions of plats, subdivisions, and mapping requirements as set forth in GS 47-30, as amended, and the *Standards of Practice of Land Surveying in North Carolina.*

5.7.4.2.5. The final plat shall depict or contain the information specified in Section 9.47. Plats not illustrating or containing the information required in Section 9.47 shall be returned to the subdivider or his or her authorized agent for completion and resubmission.

5.7.4.2.6. For any replatting or resubdivision of land, the same procedures, rules and regulations shall apply as prescribed herein for an original subdivision.

5.7.4.3. Time Limitation/Approval of Preliminary Plat. Preliminary plat approval shall be valid for two (2) years unless a greater time period is granted through a Vested Rights request. If final plat approval has not been obtained within said two (2) year period, preliminary plat approval shall become void. A new preliminary plat shall be required to be submitted and such plat shall be in conformity with all current and applicable standards in this Ordinance. Notwithstanding, the developer may submit a request to the UDO Administrator for a time extension for up to one (1) year for final plat submittal. Said request must be submitted to the UDO Administrator prior to the original plat expiration date. No more than one (1) such extension may be granted by the UDO Administrator per subdivision. The developer may submit a final plat for only a portion of the subdivision

given preliminary plat approval. Said submission shall extend the expiration date for the remaining portion(s) of the subdivision for an additional two (2) years past the date of said final plat approval.

5.7.4.4. As-Built Drawing Submittal. Prior to final plat approval or release of performance guarantees, As-Built Drawings shall be submitted and administratively approved. The preliminary plat may be altered by no more than 10% of the total subdivision area due to issues discovered during the As-Built Drawing process. If changes to more than 10% of the total subdivision area result, a new preliminary plat shall be submitted and reviewed.

5.7.4.5. Property Owners Association Covenants Review. Prior to approval of any final plat for a major subdivision, the UDO Administrator shall review the covenants of the Property Owners Association to ensure compliance with city requirements. The covenants shall include provisions for the ownership and maintenance of private streets. The UDO Administrator may refer the covenants to the City Attorney for review.

5.7.4.6. Improvement Plans Approved Prior to Construction. All plans and specifications for site improvements, including but not limited to grading, drainage, sidewalks, utilities (water and sewer), and street improvements shall be inspected and approved by the city prior to construction.

5.7.4.7. Performance Guarantees. In lieu of requiring the completion, installation and dedication of all improvements prior to final plat approval, the City of Kinston may enter into an agreement with the subdivider whereby the subdivider shall agree to complete any remaining required improvements as specified by the approved preliminary plat for that portion of the subdivision to be shown on the final plat within a mutually agreed upon specified time period not to exceed one (1) year. Once agreed upon by both parties and the security required herein is provided, the final plat may be approved by the City Council, if all other requirements of this Ordinance are met. The city shall require a certified cost estimate from a licensed contractor or engineer for the cost of completion of such improvements. *(Amended 11/20/2017)*

> ***5.7.4.7.1.*** The subdivider shall provide one of the following Performance Guarantees, elected at the subdivider's discretion, in lieu of installation:
>
> > ***5.7.4.1.1.*** Surety bond issued by any company authorized to do business in this State.

5.7.4.1.2. Letter of credit issued by any financial institution licensed to do business in this State.

5.7.4.1.3. Other form of guarantee that provides equivalent security to a surety bond or letter of credit. *(Amended 11/20/2017)*

5.7.4.7.2. The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgment by the city that the improvements for which the performance guarantee is being required are complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer. *(Amended 11/20/2017)*

5.7.4.7.3. The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained. *(Amended 11/20/2017)*

5.7.4.7.4. The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion. *(Amended 11/20/2017)*

5.7.4.7.5. The city may release a portion of any security posted as the improvements are completed and recommended for approval by the UDO Administrator. Within thirty (30) days after receiving the UDO Administrator's recommendation, the City Council shall approve or not approve said improvements. If the City Council approves said improvements, then it shall immediately release any security posted.

5.7.4.7.6. For subdivisions which are underwritten or constructed with federal funds and for which the specifications for facilities or improvements are equal to or of a higher standard than those required by the city, the bond-posting requirement may

be waived and the final plat approved prior to completion of facilities or improvements.

5.7.4.8. Transfer of Lots in Unapproved Subdivision Plats. Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the city, thereafter subdivides his land in violation of applicable city ordinances 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 applicable city ordinances and recorded in the office of the Lenoir County Register of Deeds, shall be guilty of a Class 1 misdemeanor. 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 city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to NCGS 160A-417 may be denied for lots that have been illegally subdivided. In addition to other remedies, the city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

5.7.5. Procedure for Plat Recordation.

After the effective date of this Ordinance, no subdivision plat of land within the city♠s jurisdiction shall be filed or recorded until it has been submitted to and approved by the appropriate agencies, and until this approval is entered in writing on the face of the plat by the chairperson or head of that agency. All publicly dedicated improvements must be accepted by the City Council contingent upon final plat recordation or acceptance of an approved performance bond.

A plat shall not be filed or recorded by the Lenoir County Register of Deeds of any subdivision located within the city♠s jurisdiction that has not been approved in accordance with this Ordinance, nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with the requirements of this Ordinance.

5.7.6. Issuance of Permits and Conveyance of Subdivision Lots.

Zoning permits and building permits may be issued by the City of Kinston for the erection of any building on any lot within a proposed subdivision prior to the final plat of said subdivision being approved in a manner as prescribed by this Ordinance and recorded at the Register of Deeds office, provided an improvements permit has been issued by the Lenoir County Health Department, if required. **A certificate of occupancy may not be issued until the final plat has been approved and recorded.**

After the effective date of this Ordinance, it shall be illegal for any person being the owner or agent of the owner of any land located within the territorial jurisdiction of this Ordinance, to subdivide his land in violation of this Ordinance or to transfer or sell 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 the terms of this Ordinance.

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 City Council, through its attorney or other official so designated, may enjoin an illegal subdivision, transfer or sale of land by action for injunction. Further, violators of this Ordinance shall be subject, upon conviction, to fine and/or imprisonment as provided by NCGS 14-4. Civil penalties may be issued in accordance with Section 1.5.

5.7.7. Effect of Plat Approval on Dedications.

Pursuant to G.S. 160A-374, the approval of a plat shall not be deemed to constitute or effect the acceptance by the city of the dedication of any street or other ground, public utility line or other public facility shown on the plat. However, the City Council may, by resolution, accept any dedication made to the public of lands or facilities for streets, parks, public utility lines or other public purposes when the lands or facilities are located within its corporate limits. Such acceptance shall be in accordance with the City of Kinston acceptance procedures as specified in Section 5.7.8.

5.7.8. Roadway Acceptance Procedure.

Roads will be accepted in accordance with the City of Kinston roadway acceptance policy.

5.7.9. School Site Reservation.

If the City Council and the Lenoir County Board of Education have jointly determined the specific location and size of any school sites to be reserved in accordance with the City of Kinston Comprehensive Plan, staff shall immediately notify the Board of Education in writing whenever a sketch plan for a subdivision is submitted which includes all or part of a school site to be reserved. The Board of Education shall promptly decide whether it still wishes the site to be reserved. If the Board of Education does wish to reserve the site, the subdivision shall not be approved without such reservation. The Board of Education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the Board of Education has not purchased or begun proceedings to condemn the site within 18 months, the developer may treat the land as freed of the reservation.

5.7.10. Dedication of Land for Park, Recreation, and Open Space.

Every owner/developer who proposes a major site plan or major subdivision of land shall dedicate for public or private use a portion of land or pay a fee in lieu thereof, in accordance with this section, for public park, greenway, recreation and open space sites if any portion of the proposed site plan or subdivision lies within an area designated on the officially adopted City of Kinston Recreation Master Plan as a park, open space area, greenway, pedestrian trail, or bikeway system.

5.7.10.1. Except as otherwise required by the City Council, all dedications of land shall meet the following criteria:

5.7.10.1.1. The dedicated land shall form a single parcel of land, except where the City Council determines that two or more parcels would be in the best interest of the public, given the type and distribution of open spaces needed.

5.7.10.1.2. The shape of the dedicated land shall meet the objectives of the City of Kinston Recreation Master Plan.

5.7.10.1.3. The dedicated land shall be located so as to reasonably serve the recreation and open space objectives of the city♠s Recreation Master Plan.

5.7.10.1.4. Dedicated parks, recreation and open space areas shall have a sufficient natural or manmade buffer or screen to minimize any negative impacts on adjacent residents.

5.7.10.2. The payment of fees, in lieu of the dedication of land, may occur at the request of the subdivider or developer. However, the decision to require the dedication of land for recreational purposes, or a payment of a fee in lieu, shall be made by the City Council prior to major site plan or major subdivision preliminary plat approval after having received a recommendation from the Planning Board and having evaluated the proposed dedication and the relationship the dedication would have with the city♠s overall recreational needs.

5.7.10.2.1. The fees in lieu of dedication shall be paid prior to final plat or site plan approval.

5.7.10.2.2. Procedures for determining the amount of the payment are as follows:

- An appraisal of the land in the development shall be performed by a professional land appraiser selected by the developer from an approved list maintained by the City Council. Professional land appraiser refers to a land

appraiser who, in the opinion of the City Council, has the expertise and/or certification to perform an adequate appraisal.

- The cost of the appraisal shall be borne by the owner or developer.

5.7.10.3. At the time of filing a preliminary plat, the subdivider shall designate thereon the area or areas to be dedicated pursuant to this section. If the subdivider desires to make a payment in lieu of the dedication of land, a letter to that effect shall be submitted with the preliminary plat. The City Council reserves the right to approve or disapprove dedication of parcels designated by the City of Kinston Recreation Master Plan, or payment in lieu of.

5.7.10.4. Where a dedication of land is required, the dedication shall be shown on the major subdivision final plat or major site plan when submitted, and the plat shall be accompanied by an executed general warranty deed conveying the dedicated land to the city. Where a payment in lieu of dedication is approved by the City Council, the payment will be made before the final plat is signed and recorded.

ARTICLE 6.
ZONING DISTRICTS

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ARTICLE 6. ZONING DISTRICTS

SECTION 6.1 ESTABLISHMENT OF ZONING DISTRICTS.

In accordance with the requirements of NCGS 160A-382 that zoning regulation be by districts, the City of Kinston, as shown on the Zoning Map, is hereby divided into districts which shall be governed by all of the uniform use and dimensional requirements of this Ordinance. In the creation of the respective districts, careful consideration is given to the peculiar suitability of each and every district for the particular regulations applied thereto, and the necessary, proper, and comprehensive groupings and arrangements of various uses and densities of population in accordance with a well considered comprehensive plan for the physical development of the area.

The purposes of establishing the zoning districts are:

- To implement adopted plans;
- To promote public health, safety, and general welfare;
- To provide for orderly growth and development;
- To provide for the efficient use of resources;
- To facilitate the adequate provision of services.

SECTION 6.2 INTERPRETATION.

Zoning districts have uses specified as permitted by right, conditional uses, and uses permitted with supplemental regulations. Detailed use tables are provided in Section 6.5 showing the uses allowed in each district. The following describes the processes of each of the categories that the uses are subject to:

- **Permitted by Right**: Administrative review and approval subject to district provisions and other applicable requirements only.

- **Permitted with Supplemental Regulations**: Administrative review and approval subject to district provisions, other applicable requirements, and supplemental regulations outlined in Article 7.

- **Conditional Uses**: Planning Board review and recommendation, City Council review and approval of Conditional Use Permit subject to district provisions, other applicable requirements, and conditions of approval as specified in Section 4.5. Some Conditional Uses may also be subject to supplemental regulations outlined in Article 7.

SECTION 6.3 PRIMARY ZONING DISTRICTS.

For the purposes of this Ordinance, the City of Kinston, North Carolina is hereby divided into the following primary zoning districts:

6.3.1. RA-20 Residential District. The RA-20 district is established as a district in which the principal use of land is for low-density residential and agricultural purposes. The regulations of this district are intended to protect the agricultural sections of this area from an influx of uses likely to render it undesirable for farms and low-density residential development. Lots developed in this district will not generally have access to public water or sewer systems.

6.3.2. RA-15 Residential District. The RA-15 district is established as a district in which the principal use of land is for low-density residential purposes. Lots within this district will generally have access to public water and, to a lesser extent, public sewer systems.

6.3.3. RA-12 Residential District. The RA-12 district is established to allow a low to medium density of residential land use in areas which will normally be served by both public water and sewer systems.

6.3.4. RA-8 Residential District. The RA-8 district is established to allow a medium density of residential land use in areas which are served by both public water and sewer systems.

6.3.5. RA-7 Residential District. The RA-7 district is established to allow a medium density of residential land use in areas which are served by both public water and sewer systems.

6.3.6. RA-6 Residential District. The RA-6 district is established to allow a medium to high density of residential land use along with other uses compatible with the residential uses and in areas which are served by the public water and sewer systems.

6.3.7. RA-5 Residential District. The RA-5 district is established to allow a high density of residential land use along with other uses compatible with the residential uses and primarily in older sections of the city and where water and sewer systems are available.

6.3.8. RO Residential Office District. The RO district is intended to provide a means of orderly development in areas of mixed land uses, in areas which have a high strip commercial potential such as those adjacent to major highways and streets, and to provide areas for the development of land in a manner that does not create harmful effects on surrounding properties and existing land uses.

6.3.9. O&I Office and Institutional District. The O&I district is established as a district in which the principal use of land is for residences, services, offices, and institutional types such as hospitals, medical offices, and clinics. In promoting the general purposes of this Ordinance, the specific intent of this district is to:

6.3.9.1. To encourage the construction of, and continued use of, land for offices and institutional uses;

6.3.9.2. To prohibit commercial and industrial uses of land which would generate large volumes of traffic or would interfere with the use of land for residential and office and institutional uses;

6.3.9.3. To encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this section;

6.3.9.4. To encourage the development of areas which will serve as a buffer between business districts and residential districts provided for in this Ordinance.

6.3.10. B-1 General Business District. The B-1 district is established as a district in which to accommodate highway-oriented retail and commercial service businesses which generally have as their market area the entire town and surrounding area. The major objectives of this district are to (I) encourage planned commercial and office parks; (ii) encourage vehicular access from service drives and other local commercial streets rather than directly from arterial streets; and (iii) provide a location for major shopping facilities and land uses requiring large outdoor spaces.

6.3.11. B-2 Central Business District. The B-2 district is established to maintain the central city high-density business area for residents to obtain goods and services.

6.3.12. SC Shopping Center District. The SC district is established to accommodate shopping center developments. A shopping center is defined as a group of commercial establishments, planned, developed, owned or managed as a unit, with off-street parking provided on the property; however, this shall not apply to a group of commercial establishments developed on a tract of land containing less than two (2) acres.

6.3.13. I-B Industrial Business District. The I-B district is intended to be a transitional land use district located adjacent to major thoroughfares where highway business and industrial development have high potential and where existing land uses indicate such a mixture. In addition, these regulations will allow mixing of certain normally noncompatible uses, with the provision that proper open spaces, sign control, sufficient lot sizes, increased setbacks, and good design are

provided. This will help ensure that existing residences are protected against encroachment by industrial and business nuisances and similarly the ills of traditional strip commercial and industrial development will be discouraged. The purpose of the I-B district will be to provide for and encourage the proper grouping and development of roadside areas which will best accommodate the needs of the motoring public and of businesses and light industry demanding high volume traffic and major thoroughfare access but exhibiting a fairly low development density and traffic generation capacity with controlled highway access as a major feature.

6.3.14. I-1 Industrial District. The I-1 district is for industries and warehouses which are not considered detrimental to surrounding land uses or those industries that are not considered to cause unnecessary loads or strain on existing public utility facilities. Further, these industries are to comply with applicable state and federal agencies♠ standards for emissions, effluents, noise, or odor.

6.3.15. I-2 General Industrial District. The I-2 district is established for the purpose of limiting the location of industries which by nature of their activities are not compatible with residential, institutional, and commercial uses. In addition to the permitted uses in the I-2 General Industrial District, any building or land may be used for any other industrial purpose, except that no building or occupancy permit shall be issued for any of those uses not meeting state and/or federal agencies♠ standards for objectionable emissions, effluents, noise, or odor until and unless the location of such shall have been approved by the City Council.

6.3.16. PUD Planned Unit Development. This district is defined as an area characterized by an orderly integration of residential development, open space land uses, commercial development, and light industrial development (I-B and I-1) which conform to the design requirements contained herein. It permits the planning of a project and a calculation of densities over the entire development rather than on an individual lot-by-lot basis. This district is served by public water and sewer facilities. A PUD district shall not be less than twenty-five (25) acres in area. The district may be used for development which cannot be achieved through traditional zoning.

SECTION 6.4 OVERLAY DISTRICTS ESTABLISHED.

6.4.1. Four (4) special control overlay districts are hereby established: Flood Hazard Overlay, Historic Overlay, Arts and Cultural Overlay, and Rowhouse Overlay. These special control overlay districts are intended to be superimposed over the underlying general zoning district and the land so encumbered may be used in a manner permitted in the underlying zoning district only if and to the extent such use is also permitted in the applicable overlay district. The specific objectives of each of these overlay districts are explained in the remainder of this section.

6.4.2. The flood hazard overlay district is established as an overlay district of all general zoning districts for the purpose of protecting people and property from the hazards of flooding. The flood hazard districts are further described in Article 9, Part IX of this Ordinance.

6.4.3. The historic overlay district is established as an overlay district for all general zoning districts that contain structures or other facilities of historic significance. The extent and boundaries of the historic district are as indicated on an official historic district overlay map for the City of Kinston. The purpose of the historic overlay district is to protect and conserve the heritage and character of the Kinston community by providing for the preservation of designated areas within the planning jurisdiction. No new historic districts nor any change to the boundaries of any existing historic district shall be designated until the North Carolina Department of Cultural Resources shall have been given an opportunity, in accordance with Chapter 160A, Article 19, Part 3C of the North Carolina General Statutes, to make recommendations with respect to the establishment of such new district or change in the boundaries of an existing district. The additional regulations governing land development in the historic overlay district are delineated in Article 9, Part X.

6.4.4. The arts and cultural overlay district is an overlay intended to promote low-intensity home occupations and arts-based mixed-use development in the traditional residential neighborhood setting, specifically in areas that are linked geographically to the Central Business District (B-2). Home occupations in this area might include, but are not necessarily limited to, small art galleries, cafes (not exceeding 1,000 square feet), glass-blowers, musicians, craft makers, furniture makers, sculptors, etc. The arts and cultural overlay promotes artistic-based development that does not detract from the residential character of the neighborhood. Outdoor display of art, wares, crafts, or other items created on-site is encouraged during normal business hours and weekends. Arts-based developments in the arts and cultural overlay shall remain primarily residential. As specified by Section 7.17.7, manufactured home are not allowed in the arts and cultural overlay district.

6.4.5. The rowhouse overlay district is established to provide development standards for high density single-family residential areas which are in addition to those provided by the underlying zoning districts established by the UDO. The purpose of establishing this rowhouse overlay district is to allow high density single-family residential development in locations where it will be compatible with adjacent land uses. The additional regulations governing land development in the rowhouse overlay district are delineated in Article 9, Part XI.

SECTION 6.5 TABLE OF USES AND ACTIVITIES.

P - Permitted Use PS - Permitted Use with Supplemental Regulations Blank - Not Permitted
C - Conditional Use CS - Conditional Use with Supplemental Regulations

Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
ACCESSORY USES/BUILDINGS																	
Accessory structures	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Accessory uses	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Cemetery as an accessory use to a church	P	P	P	P	P	P	P	P	P	P	P	P	P				
Child care center (as an accessory use for a principal business/industry)										P	P	P	P	P	P		
Dwelling, single-family (as an accessory for a principal business)										P	P						
Home occupations	P	P	P	P	P	PS	P	PS	P								Sect 7.43
Retaining walls and fences	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Sect 7.2
Satellite dish antennas	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Sect 7.3
Swimming pools	C	C	C	C	C	C	C	C	C	C							
Temporary construction project buildings	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Temporary storage facility (portable storage units)	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Sect 7.4
EDUCATIONAL																	
Colleges, universities, community colleges								P	P	P	P	P	P	P	P		
Kindergarten/nursery schools								C	C				C				
Libraries, public or private								P	P	P	P	P					
School, elementary or secondary	P	P	P	P	P	P	P	P	P								

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Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
School, trade or vocational								P	P	P		P	P	P	P		
INSTITUTIONAL																	
Ambulance service, rescue squad								P	P	P		P					
Cemetery	PS	PS	PS					PS	PS	PS	PS	PS					Sect 7.5
Church, synagogue, temple, or other religious building, including accessory services	P	P	P	P	P	P	P	P	P	P		P					
Crematorium									PS	PS			PS				Sect 7.6
Emergency management operation	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Fire stations	C	C	C	C	C	C	C	P	P	P	P	P	P	P	P		
Fraternal clubs and lodges								C	C	C	C	C	C				
Government offices								P	P	P	P	P	P	P	P		
Hospitals, clinics, other medical treatment facilities in excess of 10,000 square feet of floor area (less than 1 acre)								P	P	P							
Hospitals, clinics, other medical treatment facilities in excess of 10,000 square feet of floor area (1 acre or more)								C	C	C							
Military reserve, national guard centers										P			P				
Penal & correctional facilities														C	C		
Pet cemetery	C	C							C	C							
Police stations	C	C	C	C	C	C	C	P	P	P	P	P	P				
Post office, main											P						

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Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
Post office, substation								P	P	P	P	P	P				
INSTITUTIONAL (cont.)																	
Recycling materials collection operations	C	C								C			C	C			
Sanitary landfill															CS		Sect 7.7
Special events	CS	CS	CS	CS	CS	CS	CS	PS	PS	PS	PS	PS	PS	PS	PS		Sect 7.8
Utility facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Water supply reservoirs	C	C															
Wireless communication facilities, 60 feet tall or less	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Sect 7.9
Wireless communication facilities, more than 60 feet tall	CS	CS	CS	CS	CS	CS	CS	CS	PS	PS	PS	PS	PS	PS	PS		Sect 7.9
MANUFACTURING AND INDUSTRIAL																	
Artisan's workshop (3,000 square feet or less)										P	PS		P	P			Sect 7.10
Artisan's workshop (exceeding 3,000 square feet)										C	CS		C	C			Sect 7.10
High impact manufacturing, processing, creating, repairing, renovating, painting, cleaning, assembling of goods, merchandise, and equipment within a fully enclosed building													CS	PS	PS		Sect 7.11, 7.12
Mining or quarrying operations, including on-site sales of products	C	C													C		
Reclamation landfill														C	C		

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Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
Sawmills and planing mills															P		
OFFICES, PROFESSIONAL AND SERVICES																	
Accounting agencies								P	P	P	P	P	P				
Advertising agencies								P	P	P	P	P	P				
Attorneys								P	P	P	P	P	P				
Banks/financial services								P	P	P	P	P	P				
Chiropractic								P	P	P	P	P	P				
Contractors offices								P	P	P	P	P	P				
Engineering/surveying/architectural services ▪ general								P	P	P	P	P	P				
Insurance office								P	P	P	P	P	P				
Interior decorating service								P	P	P	P	P	P				
Medical and dental offices/clinics								P	P	P	P	P	P				
Medical support offices (testing labs)								P	P	P	P	P	P				
Opticians								P	P	P	P	P	P				
Real estate office/appraisal								P	P	P	P	P	P				
RECREATIONAL																	
Arboretums and botanical gardens	C	C						P	P	P	P		P				
Athletic fields	C	C	C	C	C	C	C	C	C	C							
Automobile and motorcycle racing track															C		
Billiards and pool halls										CS	CS	CS					Sect 7.13

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Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
Bingo										PS		PS					Sect 7.13
RECREATIONAL (cont.)																	
Bowling alleys										P		C					
Campgrounds	C	C															
Coliseums, stadiums designed to accommodate more than 1,000 people										C	C						
Dance halls										CS	CS						Sect 7.13
Drive-in movie theaters										C							
Gamerooms										CS	CS	PS					Sect 7.13
Golf courses	CS	CS	CS	CS	CS	CS	CS	CS	CS	CS			CS				Sect 7.14
Golf driving ranges not accessory to golf courses	C	C	C							C			C				
Horseback riding stables	CS	CS															Sect 7.15
Indoor athletic and exercise facilities										P	P	P	P				
Indoor tennis and squash courts									P	P	C	P	P				
Miniature golf courses										P							
Movie theaters										C	C	C					
Outdoor athletic and exercise facilities								C	C	C							
Parks	C	C	C	C	C	C	C	C	C	C	C		C	C	C		
Par 3 golf courses	C	C	C						C	C							
Privately-owned outdoor recreational facilities								C	C	C	C						

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Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
Publicly-owned and operated outdoor recreational facilities	C	C	C	C	C	C	C	P	P	P	P						
RECREATIONAL (cont.)																	
Skateboard parks	C	C	C							C	C						
Skating rinks									C								
Tennis courts	C	C	C	C	C	C	C	C	C	C							
Water slides	C	C	C							C							
RESIDENTIAL																	
Adult care home (over 6 residents) *(Amended 11/20/17)*	C	C				C	C	C	C								
Dwelling, manufactured home Class A (on a single lot)	PS	PS				PS	PS	PS	PS								Sect 7.17
Dwelling, manufactured home Class B (on a single lot)	PS	PS					PS										Sect 7.17
Dwelling, multi-family (less than 1 acre)						P	P	PS	PS		PS						Sect 7.18
Dwelling, multi-family (1 acre or more)						C	C	CS	CS		CS						Sect 7.18
Dwelling, over a business											PS						Sect 7.44
Dwelling, single-family	P	P	P	P	P	P	P	P	P		C						
Dwelling, two-family (duplex)	P	P				P	P	P	P		C						
Family care home	PS	PS	PS	PS	PS	PS	PS	PS	PS								Sect 7.16
Family child care home	PS	PS	PS	PS	PS	PS	PS	PS	PS								Sect 7.27
Family foster home *(Amended 11/20/17)*	P	P	P	P	P	P	P	P	P								

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Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
First Floor Residential (*Amended 1/30/19)*	P	P	P	P	P	P	P	P			C						
Fraternities, sororities, dormitories, and similar housing	C	C				C	C	P	P								
RESIDENTIAL (cont.)																	
Granny pods	PS	PS	PS	PS	PS	PS	PS	PS	PS								Sect 7.46
Manufactured home parks		CS					CS										Sect 7.19
Multi-unit assisted housing with services	C	C			C	C	C	C	C								
Planned residential developments	CS	CS				CS	CS	CS	CS								Sect 7.20
Planned unit development																CS	Sect 7.21
Residential child care facility									P								
Rooming and boardinghouse	C	C				C	C	P	P	P							
Small child care center *(Amended 11/20/17)*	PS								PS								Sect 7.27
Temporary emergency, construction, and repair residences	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			Sect 7.22
Tiny houses *(Amended 11/20/17)*					PS	PS	PS										Sect 7.47
Tourist homes	C	C				C	C	P	P	P	P						
RETAIL SALES AND SERVICES																	
ABC store										P	P	P					
Adult and sexually oriented businesses										CS					CS		Sect 7.23
Art galleries								P	P	P	P	P					
Automobile parking garages or parking lots								C	C	P	C	P	P	P	P		

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Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
Automobile parts and accessories										P							
Automobile repair shop or body shop										P			P	P			
RETAIL SALES AND SERVICES (cont.)																	
Automobile sales and service *(Amended 11/20/17)*										P			P				
Automobile service stations										PS	PS	PS	PS				Sect 7.24
Automotive towing										P							
Bakery (retail)										P	P	P	P				
Barber shops, beauty shops								P	P	P	P	P	P				
Bars										CS	CS	CS					Sect 7.13
Battery charging station									PS	PS	PS	PS	PS	PS	PS		Sect 7.25
Battery exchange station										PS	PS	PS	PS	PS	PS		Sect 7.25
Bed & breakfast	CS	CS				CS	CS	PS	PS	PS	PS						Sect 7.26
Book store, including the retail of stationery, books, magazines, newspapers										P	P	P	P				
Building supplies and sales										P			P				
Car wash										P		P	P				
Child care center *(Amended 11/20/17)*	CS							PS	PS	PS	PS	PS	PS				Sect 7.27
Clothing store										P	P	P	P				
Commercial greenhouse or nursery	P	P								P			P	P	P		
Computer sales and repair										P	P	P	P				
Convenience stores										P	C	P	P				

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Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
Daycare facility, adult *(Amended 11/20/17)*	CS	CS	CS	CS	CS	CS	CS	PS	PS	PS		PS	PS				Sect 7.28
Deli										P	P	P					
RETAIL SALES AND SERVICES (cont.)																	
Distilleries										PS	PS			PS	PS		Section 7.31
Dog grooming									P	P	C						
Drug store										P	P	P					
Dry cleaner, laundromat									P	P	P	P					
Electrical equipment sales and repair										P			P	P			
Electrical repair or contractor (no open storage)									P	P	P						
Electrical repair or contractor (open storage allowed)										P	P		P				
Engine repair, small (including motorcycle)										P							
Exterminating and pest control services										P			P				
Fabric store										P	P	P	P				
Farm, craft, produce markets										P	P		P				
Flea markets										CS							Sect 7.29
Florists										P	P	P					
Food truck									PS	PS	PS	PS	PS	PS			Sect 7.45
Funeral home									P	P							
Gas sales operations									PS	PS	PS	PS	PS				Sect 7.24

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Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
General contractors (no open storage)									P	P	P						
General contractors (open storage allowed)										P	P		P				
RETAIL SALES AND SERVICES (cont.)																	
Gifts and souvenirs										P	P	P					
Grocery/food store										P	P	P					
Hardware store										P	P	P	P				
Heating and air conditioning installation and repair (no open storage)									P	P	P						
Heating and air conditioning installation and repair (open storage allowed)										P	P		P				
Home appliance dealers										P	P	P					
Home appliance repair										P	P		P				
Hotels and motels									C	P	C	P	P				
Ice cream stand or store										P	P	P					
Internet Sweepstakes Operation										CS					CS		Sect 7.50
Jewelry store										P	P	P	P				
Manufactured home sales										PS							Sect 7.30
Microbrewery										PS	PS			PS	PS		Sect 7.31
Mixed use										PS	PS		PS			PS	Sect 7.32
Motor vehicle, farm equipment, and boat sales or rental or sales and service										PS			PS				Sect 7.33
Museums								P	P	P	P	P					

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C - Conditional Use CS - Conditional Use with Supplemental Regulations

Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
Music instrument sales and service										P	P	P					
Music studio								P	P	P	P	P					
Nail/tanning salon								P	P	P	P	P					
RETAIL SALES AND SERVICES (cont.)																	
Night clubs and social clubs										CS	CS	CS					Sect 7.13
Nursing home	C	C				C	C	C	C	C							
Office supplies										P	P	P					
Paint store										P	P	P	P				
Photo studios								P	P	P	P	P					
Plumbing repair contractor (no open storage)									P	P	P						
Plumbing repair contractor (open storage allowed)										P	P		P				
Printing, publishing, and engraving establishments										P	P	P	P				
Private postal shipping and receiving								P	P	P	P	P	P				
Radio and TV stations/studios										P	P	P	P	P	P		
Rental of goods, merchandise, and equipment (no outside storage or display of goods)										P	P	P	P				
Rental of goods, merchandise, and equipment (with outside storage and display of goods)										P		P	P		P		
Restaurants, excluding fast food & drive thru services *(Amended 11/20/17)*										P	PS	P	P				Sect 7.49
Restaurants, including fast food & drive thru services *(Amended 11/20/17)*										P	PS	P	P				Sect 7.49

P - Permitted Use PS - Permitted Use with Supplemental Regulations Blank - Not Permitted
C - Conditional Use CS - Conditional Use with Supplemental Regulations

Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
Sales of goods, merchandise, and equipment (no outside storage or display of goods)										P	P	P	P	P			
Sales of goods, merchandise, and equipment (with outside storage and display of goods)										P		C	C	C			
Shoe store or repair										P	P	P					
RETAIL SALES AND SERVICES (cont.)																	
Shopping center										C		C					
Sporting goods store										P	P	P					
Tailor/dressmaker/seamstress										P	P	P					
Tattoo/body piercing parlors										CS	CS	CS					Sect 7.34
Tire sales (no open storage) *(Amended 11/20/17)*										P	P	P	P	P	P		
Tire sales (open storage allowed) *(Amended 11/20/17)*										CS			CS	PS	PS		Sect 7.48
Toy store										P	P	P					
Travel agencies								P	P	P	P	P					
Truck stop										C				P	P		
Truck terminals															P		
Truck wash										C					P		
Upholstery - furniture repair										P	P		P				
Veterinarian, animal clinic, no outside kennel									P	P							
Veterinarian, animal clinic, outside kennel										CS			PS				Sect 7.35
TRANSPORTATION																	

P - Permitted Use PS - Permitted Use with Supplemental Regulations Blank - Not Permitted
C - Conditional Use CS - Conditional Use with Supplemental Regulations

Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
Airport, publicly-owned or operated														P	P		
Airport, privately-owned	C	C												P	P		
Bus station, train station										P	C						
Taxi operation										P	C	P					
WHOLESALE SALES AND WAREHOUSING																	
Agricultural product warehousing	C	C											P	P	P		
Self-service storage facility										PS			PS	PS	PS		Sect 7.36
Salvage yards, junkyards, automobile graveyards															C		
Storage inside completely enclosed structure													P	P	P		
Storage outside completely enclosed structure														P	P		
Wholesale sales										P			P	P	P		
OTHER USES																	
Bona fide farms	PS	PS	PS	PS	PS	PS	PS	PS	PS					PS	PS		Sect 7.37
Community gardens	P	P	P	P	P	P	P	P	P	P							
Farm stand	P									P			P				
Off-premise signs										P			P	P	P		
Solar energy generating facility, accessory	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Sect 7.38
Solar farm	CS	CS	CS											PS	PS		Sect 7.39
Temporary uses								PS	PS	PS	PS	PS	PS	PS			Sect 7.40
Wind energy generating facility, accessory	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Sect 7.41

P - Permitted Use PS - Permitted Use with Supplemental Regulations Blank - Not Permitted
C - Conditional Use CS - Conditional Use with Supplemental Regulations

Uses	*Zoning Districts*																*Supplemental Regulations*
	RA-20	RA-15	RA-12	RA-8	RA-7	RA-6	RA-5	RO	O&I	B-1	B-2	SC	I-B	I-1	I-2	PUD	
Wind farm	CS													CS	CS		Sect 7.42

SECTION 6.6 TABLE OF AREA, YARD, AND HEIGHT REQUIREMENTS.

District	Minimum Lot Size	Minimum Lot Width	Minimum Distance from Front Street Right-of-Way	Minimum Distance from Street Side Right-of-Way	Minimum Distance from Front Street Centerline	Minimum Distance from Side Lot Boundary Line	Minimum Distance from Rear Lot Boundary Line	Maximum Building Height
RA-20 Residential District	15,000 sq. ft.	100 ft.	40 ft	30 ft	70 ft	15 ft	25 ft	40 ft
RA-15 Residential District	15,000 sq. ft.	100 ft.	40 ft	30 ft	70 ft	15 ft	25 ft	40 ft
RA-12 Residential District	12,000 sq. ft.	75 ft.	40 ft	30 ft	70 ft	12 ft	25 ft	40 ft
RA-8 Residential District	8,000 sq. ft.	75 ft.	40 ft	30 ft	70 ft	12 ft	20 ft	40 ft
RA-7 Residential District	8,000 sq. ft.	75 ft.	30 ft	20 ft	60 ft	8 ft	20 ft	40 ft
RA-6 Residential District (First unit) 2 units Each additional unit	6,000 sq. ft. 8,000 sq. ft. 3,500 sq. ft.	60 ft.	30 ft	20 ft	60 ft	8 ft	20 ft	40 ft
RA-5 Residential District (First unit) 2 units Each additional unit	5,000 sq. ft. 7,000 sq. ft. 3,300 sq. ft.	50 ft.	20 ft	15 ft	50 ft	6 ft	20 ft	40 ft
PUD Planned Unit Development District	Determined by Conditional Use Permit							
RO Residential Office District Residential uses (First unit) 2 units Each additional unit Nonresidential uses	 5,000 sq. ft. 7,000 sq. ft. 2,000 sq. ft. 7,000 sq. ft.	 50 ft. 120 ft.	50 ft	15 ft	80 ft	6 ft	20 ft	40 ft
O&I Office and Institutional District	8,000 sq. ft.	60 ft.	30 ft	20 ft	60 ft	8 ft	20 ft	40 ft
B-1 General Business District	8,000 sq. ft.	60 ft.	30 ft	20 ft	60 ft	8 ft	20 ft	40 ft
B-2 Central Business District	No minimum	None	None*	None	None	None	None	No limit
SC Shopping Center District	2 acres	None	60 ft**	30 ft	90 ft	8 ft	20 ft	No limit
I-B Industrial Business District	10,000 sq. ft.	100 ft.	30 ft	None	60 ft	20 ft	20 ft	No limit
I-1 Industrial District	10,000 sq. ft.	100 ft.	30 ft	None	60 ft	20 ft	20 ft	No limit
I-2 General Industrial District	10,000 sq. ft.	100 ft.	30 ft	None	60 ft	20 ft	20 ft	No limit

*The maximum front yard building setback in the B-2 district for the principal building is five (5) feet from the right-of-way. This maximum setback shall not apply to churches or other public buildings.

**Principal building 60 feet; Outparcel - same as B-1.

SECTION 6.7 NOTES TO THE TABLE OF AREA, YARD, AND HEIGHT REQUIREMENTS.

6.7.1. Residential Density

6.7.1.1. Within the RA-20, RA-15, RA-12, RA-8, and RA-7 zoning districts, primary residences with an accessory apartment shall be allowed only on lots having at least one hundred fifty (150) percent of the minimum square footage required for one (1) dwelling unit on a lot in such districts. Within all other zoning districts, primary residences with accessory apartments shall have an additional two thousand (2,000) square feet of lot area in excess of the lot area requirement of Section 6.6.

6.7.1.2. In districts permitting two-family or multi-family dwellings, where the area of the property is such that a portion remains after full requirements have been met for other dwelling units on the same property, the following shall apply: One (1) additional unit shall be permitted on a lot containing area for three (3) or more units and eighty (80) percent of the area required for an additional unit.

6.7.2. Minimum Lot Widths.

The lot width shall be measured along a straight line connecting the points at which a line that demarcates the required setback from the street intersects with lot boundary lines at opposite sides of the lot.

6.7.3. Building Setback Requirements.

6.7.3.1. Subject to Section 6.7.4 and the other provisions of this section, no portion of any building may be located on any lot closer to any lot line or to the street right-of-way line or centerline than is authorized in Section 6.6.

6.7.3.1.1. If the street right-of-way line is readily determinable (by reference to a recorded map, set irons, or other means), the setback shall be measured from such-right-of-way line. If the right-of-way line is not so determinable, the setback shall be measured from the street centerline.

6.7.3.1.2. As used in this section, the term ■lot boundary line• refers to lot boundaries other than those that abut streets. The term ■street side• refers to the street side of a corner lot other than the front street.

6.7.3.1.3. As used in this section, the term ■building• includes any substantial structure which by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. Without limiting the generality of the foregoing, the following structures shall be deemed to fall within this description:

6.7.3.1.3.1. Gas pumps and overhead canopies or roofs.

6.7.3.1.3.2. Fences running along lot boundaries adjacent to public street rights-of-way if such fences exceed six feet in height and are substantially opaque.

6.7.3.2. Landscaping and buffering requirements may result in a need for increased building setbacks depending on the location and use of the property.

6.7.3.3. Whenever a lot in a nonresidential district has a common boundary line with a lot in a residential district and the property line setback requirement applicable to the residential lot is greater than that applicable to the nonresidential lot, then the lot in the nonresidential district shall be required to observe the property line setback requirement applicable to the adjoining residential lot.

6.7.3.4. Setback distances shall be measured from the property line or street right-of-way line to a point on the lot that is the nearest extension of any part of the building that is substantially a part of the building itself and not a mere appendage to it (such as a flagpole, uncovered deck, steps, etc.). Ordinary projections of sills, belt courses, cornices, buttresses, ornamental features, and eaves are allowed to project into setback areas, provided such projections do not exceed twenty-four (24) inches. Open or enclosed fire escapes, outside stairways, balconies, and other necessary unenclosed projections may extend no more than three and one-half (3-1/2) feet into a required setback. The ordinary projections of chimneys and flues may be permitted where the UDO Administrator finds that they are placed so as not to obstruct sight and ventilation.

6.7.3.5. Whenever a private road that serves more than three (3) lots or more than three (3) dwelling units or that serves any nonresidential use tending to generate traffic equivalent to more than three (3) dwelling units is located along a lot boundary, then:

6.7.3.5.1. If the lot is not also bordered by a public street, buildings shall be set back from the centerline of the private road just as if such road were a public street; or

6.7.3.5.2. If the lot is also bordered by a public street, then the setback distance on lots used for residential purposes shall be measured from the inside boundary of the traveled portion of the private road.

6.7.3.6. Deviations from the applicable setback requirements of this section may be made for nonconforming lots in accordance with Section 8.4, Nonconforming Lots of Record.

6.7.4. Accessory Building Setback Requirements.

6.7.4.1. Accessory buildings shall not be allowed in a front yard or the required side yard, except as provided herein.

6.7.4.2. Accessory buildings shall not occupy more than thirty percent (30%) of the rear yard.

6.7.4.3. Accessory buildings shall be allowed in the rear yard, provided they are located not less than five (5) feet from the side and rear lot lines (except for corner lots).

6.7.4.4. Accessory buildings in the side yard on the street side of a corner lot shall not extend beyond the minimum required front yard line of the lot to the rear of the corner lot.

6.7.5. Building Height Limitations.

6.7.5.1. For the purposes of this section:

6.7.5.1.1. The height of a building shall be the vertical distance measured from the mean elevation of the finished grade at the front of the building to the highest point of the building.

6.7.5.1.2. A point of access to a roof shall be the top of any parapet wall or the lowest point of a roof's surface, whichever is greater. Roofs with slopes greater than seventy-five (75) percent are regarded as walls.

6.7.5.2. Subject to the remaining provisions of this section, building height limitations in the various zoning districts shall be as indicated in Section 6.6.

6.7.5.3. Subject to subsection 6.7.5.4, the following features are exempt from the district height limitations set forth in Section 6.6.

6.7.5.3.1. Chimneys, water tanks, church spires, elevator shafts, scenery lofts, and similar structural appendages not intended as places of occupancy or storage;

6.7.5.3.2. Flagpoles and similar devices;

6.7.5.3.3. Heating and air conditioning equipment, solar collectors, and similar equipment, fixtures, and devices.

6.7.5.4. The features listed in subsection 6.5.7.3 are exempt from the height limitations set forth in Section 6.6 if they conform to the following requirements:

6.7.5.4.1. Not more than one-third of the total roof area may be consumed by such features.

6.7.5.4.2. The features described in subsection 6.7.5.3.3 above must be set back from the edge of the roof a minimum distance of one (1) foot for every foot by which such features extend above the roof surface of the principal building to which they are attached.

6.7.5.4.3. The permit-issuing authority may authorize or require that parapet walls be constructed (up to a height not exceeding that of the features screened) to shield the features listed in subsection 6.7.5.3.1 and 6.7.5.3.3. from view.

6.7.5.5. Notwithstanding Section 6.6, in any zoning district the vertical distance from the ground to a point of access to a roof surface of any nonresidential building or any multi-family residential building containing four (4) or more dwelling units may not exceed forty (40) feet unless the fire chief certifies to the permit-issuing authority that such building is designed to provide adequate access for firefighting personnel or the building inspector certifies that the building is otherwise designed or equipped to provide adequate protection against the dangers of fire.

6.7.5.6. Towers and antennas are allowed in all zoning districts to the extent authorized in the Table of Uses and Activities.

6.7.6. General Height and Area Exceptions and Supplements.

The following requirements or regulations qualify or supplement as the case may be, the district regulations or requirements appearing elsewhere in this Ordinance.

6.7.6.1. No building exceeding forty (40) feet or three (3) stories in height above grade shall be erected without certification from the North Carolina State Fire Marshal that such buildings, as proposed to be located, constructed or equipped, and particularly occupants or patrons of upper stories, can be properly protected in case of fire.

6.7.6.2. Public or semipublic buildings, hospitals, sanitariums, schools and churches or temples, where permitted in a district, may be erected to a height not exceeding one hundred (100) feet, except that buildings in the B-2 Central Business District are not restricted.

6.7.6.3. Every part of a required yard or court shall be open from its lowest point to the sky unobstructed, except for the ordinary projection of sills, belt courses, cornices, buttresses, ornamental features and eaves; provided, however, that none of the above projections shall project into a minimum court more than six (6) inches nor into a minimum side yard more than twenty-four (24) inches.

6.7.7. Specific Height and Area Exceptions in the B-1, B-2, I-B, I-1, and I-2 Districts.

Required interior side yards in the B-1 General Business, B-2 Central Business District, I-B Industrial Business District, I-1 Industrial District, and I-2 General Industrial District may be reduced to the side property line provided the following conditions are met:

6.7.7.1. A four-hour rated firewall with a two-hour rated parapet extended three (3) feet above the roof shall be constructed along the full exterior side wall length.

6.7.7.2. Not less than two (2) sides of the building shall have permanent, unobstructed fire equipment access.

6.7.7.3. Provided, however, that side yards on the street side of corner lots shall maintain the required dimensional setback for the specified district.

6.7.7.4. Provided, further, that the following occupants and material storage are classified as highly hazardous. Such occupancies and material storage shall be required to maintain the required dimensional setback for the specific district.

6.7.7.4.1. Unrated building materials (no fire rating).

6.7.7.4.2. Paint in excess of five (5) cases.

6.7.7.4.3. Any material designated by the manufacturer as potentially explosive.

6.7.7.4.4. Poisons.

6.7.7.4.5. Spray painting.

6.7.7.4.6. Tire storage and/or recapping supplies and materials.

6.7.7.4.7. Wholesale petroleum products.

6.7.7.4.8. LP gas products.

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ARTICLE 7. SUPPLEMENTAL REGULATIONS

SECTION 7.1 INTRODUCTION.

The following supplemental regulations shall pertain to the uses listed in the Table of Uses located in Article 6 which are identified with an ■S• for supplemental regulations.

For any use which requires the issuance of a conditional use permit, the supplemental use regulations listed herein may be in addition to any other fair and reasonable conditions placed on the use by the City Council. The conditions may impose greater restrictions on a particular use than those which are listed herein.

SECTION 7.2 RETAINING WALLS AND FENCES.

The setback requirements of these regulations shall not prohibit any necessary retaining wall nor prohibit any planted buffer strip, fence, or wall. Walls and fences shall not create a sight obstruction at street intersections or at driveways.

SECTION 7.3 SATELLITE DISH ANTENNAS.

7.3.1. Only one (1) satellite dish antenna shall be allowed per premises in residential districts, except where additional satellite dishes are necessary to receive the desired service.

7.3.2. In all residential districts, a satellite dish antenna shall be permitted in a rear yard only and shall be located no closer than five (5) feet to a side or rear lot line. If no usable signal can be obtained by rear yard placement, a satellite dish antenna may be installed on the rear side of the roof, provided the antenna is not visible from the front yard and does not exceed four (4) feet in diameter.

7.3.3. In all nonresidential districts, a satellite dish antenna may be installed in a front, side, or rear yard or on the roof of the principal structure, provided it is sufficiently anchored to a rafter, girder, or other superstructure member of the building so as to be structurally secure. Ground-mounted antenna shall be located no closer than ten (10) feet to a street right-of-way nor five (5) feet from a side or rear lot line.

7.3.4. A dish antenna shall be permanently ground- or roof-mounted (where permitted) and no antenna shall be installed on a portable or moveable structure except to transport an antenna to a permanent site or to provide a temporary on-site antenna for testing purposes not to exceed seven (7) days in duration.

7.3.5. Where compliance with this Ordinance would prevent reception of an acceptable quality signal or impose unreasonable expense or delay in obtaining an acceptable quality signal, dish antenna may be installed in the front yard or on the front roof in residential districts. No dish antenna shall be installed pursuant to this subsection, which is closer than five (5) feet to a side front lot line, creates a safety hazard, or is in violation of the city's historic district regulations. This subsection shall apply only to the following dish antennas:

7.3.5.1. Dish antenna not exceeding one meter (39.37") in diameter and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite;

7.3.5.2. Dish antenna not exceeding one meter in diameter or diagonal measurement and designed to receive video programming services via broadband radio services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; or

7.3.5.3. An antenna that is designed to receive local television broadcast signals. Masts higher than twelve (12) feet above the roofline may be subject to local permitting requirements.

7.3.6. No antenna shall exceed an overall diameter of twelve (12) feet nor an overall height of seventeen (17) feet above existing grade when located on the ground, and when located on the roof of a building in a nonresidential district, no antenna shall exceed the building height limitation for the district in which it is located by more than ten (10) feet.

SECTION 7.4 TEMPORARY STORAGE FACILITY (PORTABLE STORAGE UNITS).

Temporary storage facilities, as defined in Appendix A, shall be subject to the following regulations:

7.4.1. Dumpsters or temporary storage facilities incidental to a natural disaster, or construction with a valid building permit, shall be exempt from these regulations.

7.4.2. Temporary storage facilities intended to be in place for greater than thirty (30) days shall require a zoning permit.

7.4.3. With the exception of Shopping Center (SC), Industrial Business (I-B), Light Industrial (I-1), and Heavy Industrial (I-2) zoning districts, temporary storage facilities may be placed on a property a maximum of any one hundred and twenty (120) day period during one calendar year from its initial placing on a property.

7.4.4. No temporary storage facility shall encroach into any public right-of-way.

7.4.5. No temporary storage facility shall be used as living space and/or a permanent accessory building.

SECTION 7.5 CEMETERIES.

7.5.1. A cemetery shall contain not less than five (5) contiguous acres of land.

7.5.2. Chapels, mortuaries, mausoleums, and sales and administrative offices may be developed within the cemetery. Access to the buildings shall be from within the cemetery. No building permitted by these regulations shall be located closer than one hundred fifty (150) feet to any residential dwelling on land adjoining the cemetery.

7.5.3. Access to the cemetery shall be provided by way of private drives extending from a public street and of sufficient width to accommodate two-way traffic. Parking shall be provided entirely on private internal roads.

7.5.4. A perimeter buffer strip fifty (50) feet in depth shall be maintained around the entire cemetery. There shall be no burial sites, buildings, or other structures located within the buffer strip, and the strip shall be planted in accordance with Article 9, Part I, so as to effectively screen the cemetery and burial activities therein from view from outside of the cemetery.

SECTION 7.6 CREMATORIUM.

Crematoriums may be allowed pursuant to the use table in Section 6.5, upon compliance with the following:

7.6.1. All facilities must comply with NC State licensing requirements.

7.6.2. There shall be no emission of particulate matter or noticeable odors.

7.6.3. No new crematorium operation may be located within 1,500 feet from an existing crematory facility.

7.6.4. The loading/unloading zone for the facility must be enclosed or screened from view with fencing.

7.6.5. All windows with an open view of the crematory processing equipment must be screened from view.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

SECTION 7.7 SANITARY LANDFILL.

7.7.1. No refuse shall be deposited and no building or structure shall be located within one hundred fifty (150) feet of the nearest property line.

7.7.2. A landfill or incinerator shall comply with applicable state regulations.

SECTION 7.8 SPECIAL EVENTS.

7.8.1. In deciding whether a permit for a special event should be denied for any reason specified in Section 4.5.4.5, or in deciding what additional conditions to impose under Section 4.5.9, the permit-issuing authority shall ensure that (if the special event is conducted at all):

> ***7.8.1.1.*** The hours of operation allowed shall be compatible with the uses adjacent to the activity.
>
> ***7.8.1.2.*** The amount of noise generated shall not disrupt the activities of the adjacent land uses.
>
> ***7.8.1.3.*** The applicants shall guarantee that all litter generated by the special event be removed at no expense to the city.
>
> ***7.8.1.4.*** The permit-issuing authority shall not grant the permit unless it finds that the parking generated by the event can be accommodated without undue disruption to or interference with the normal flow of traffic or with the right of adjacent and surrounding property owners.
>
> ***7.8 1.5.*** A minimum lot area of three (3) acres is available for circuses, fairs, and carnivals.

7.8.2. In cases where it is deemed necessary, the permit-issuing authority may require the applicant to post a bond to ensure compliance with the conditions of the conditional use permit.

7.8.3. If the permit applicant requests the city to provide extraordinary services or equipment or if the City Manager otherwise determines that extraordinary services or equipment should be provided to protect the public health or safety, the applicant shall be required to pay to the city a fee sufficient to reimburse the city for the costs of these services. This requirement shall not apply if the event has been anticipated in the budget process and sufficient funds have been included in the budget to cover the cost incurred.

SECTION 7.9 WIRELESS COMMUNICATION FACILITIES.

7.9.1. Compliance with Federal Law. *(Amended 11/20/2017)*

7.9.1.1. The deployment of wireless infrastructure is critical to ensuring first responders can provide for the health and safety of all residents of North Carolina and that, consistent with section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 USC § 1455(a), which creates a national wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures, it is the policy of the State and the City of Kinston to facilitate the placement of wireless communications support structures in all areas of the Town.

7.9.1.2. The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 USC § 332 as amended, section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 USC § 1455(a), and in accordance with the rules promulgated by the Federal Communications Commission.

7.9.1.3. This Section shall not be construed to authorize the City of Kinston to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein.

7.9.2. Approvals Required for Wireless Facilities and Wireless Support Structures.

7.9.2.1. Administrative Review and Approval. The following types of applications are subject to the review process as provided in Section 5.3. No other type of zoning or site plan review is necessary.

7.9.2.1.1. New Wireless Support Structures that are less than sixty (60) feet in height, in any zoning district.

7.9.2.1.2. New Wireless Support Structures that are less than two hundred (200) feet in height, in any Industrial district.

7.9.2.1.3. Concealed Wireless Facilities that are sixty (60) feet or less in height, in any residential district.

7.9.2.1.4. Concealed Wireless Facilities that are one hundred fifty (150) feet or less in height, in any zoning district *except* residential districts.

7.9.2.1.5. Monopoles or Replacement Poles located on public property or within utility easements or rights-of-way, in any zoning district.

7.9.2.1.6. COWs, in any zoning district, if the use of the COW is either not in response to a declaration of an emergency or disaster by the Governor, or will last in excess of one hundred twenty (120) days.

7.9.2.1.7. Substantial changes.

7.9.2.1.8. Collocations.

7.9.2.2. Conditional Use Permit. Any application for Wireless Facilities and/or Wireless Support Structures not subject to Administrative Review and Approval pursuant to this Ordinance shall be permitted in any district upon the granting of a Conditional Use Permit in accordance with the standards for granting Conditional Use Permits set forth in Section 4.5.

7.9.2.3. Exempt From All Approval Processes. The following are exempt from all City of Kinston zoning approval processes and requirements:

7.9.2.3.1. Removal or replacement of transmission equipment on an existing wireless tower or base station that does not result in a substantial changes as defined in this Ordinance.

7.9.2.3.2. Ordinary Maintenance of existing Wireless Facilities and Wireless Support Structures, as defined in this Ordinance. Nothing in this section requires an application and approval for routine maintenance or limits the performance of routine maintenance on wireless support structures and facilities, including in-kind replacement of wireless facilities.

7.9.2.3.3. Wireless Facilities placed on Utility Poles.

7.9.2.3.4. COWs placed for a period of not more than one hundred twenty (120) days at any location within the City of Kinston or after a declaration of an emergency or a disaster by the Governor.

7.9.3. Administrative Review and Approval Process.

7.9.3.1. Content of Application Package - For New Sites. All Administrative Review application packages must contain the following in addition to those requirements outlined in Section 5.3 and 5.6:

7.9.3.1.1. Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue application. Such submissions need not disclose financial lease terms.

7.9.3.1.2. Documentation from a licensed professional engineer if calculation of the fall zone and certification that the wireless support structure has sufficient structural integrity to accommodate the required number of additional users as provided in this Ordinance.

7.9.3.2. Content of Application Package - For Other Sites/Facilities. All Administrative Review application packages must contain the following in addition to those requirements outlined in Section 5.3 and 5.6:

7.9.3.2.1. For collocations and substantial changes, written verification from a licensed professional engineer certifying that the host support structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennas.

7.9.3.2.2. For substantial changes, drawings depicting the improvements along with their dimensions.

7.9.3.3. Approval Schedule.

7.9.3.3.1. Applications for Collocation, Monopole or Replacement Pole, a Concealed Wireless Facility, a Non-Exempt COW, or a Substantial Change. Within forty-five (45) days of the receipt of a complete application for a Collocation, a Monopole or Replacement Pole, a Concealed Wireless Facility, a Non-Exempt COW, or a Substantial Change, the UDO Administrator will:

7.9.3.3.1.1. Review the application for conformity with this Ordinance. An application under this section is deemed to be complete unless the UDO Administrator provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually

agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The UDO Administrator may deem an application incomplete if there is insufficient evidence provided to show that the proposed collocation or eligible facilities request will comply with federal, state, and local safety requirements. The UDO Administrator may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the collocation or eligible facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

7.9.3.3.1.2. Issue a written decision approval an eligible facilities request application within forty-five (45) days of such application being deemed complete. For a collocation application that is not an eligible facilities request, the UDO Administrator shall issue its written decision to approve or deny the application within forty-five (45) days of the application being deemed complete.

7.9.3.3.1.3. Failure to issue a written decision within forty-five (45) calendar days shall constitute an approval of the application.

7.9.3.3.2. Applications for New Wireless Support Structures that are Subject to Administrative Review and Approval. Within forty-five (45) calendar days of the receipt of an application for a New Wireless Support Structure that is subject to Administrative Review and Approval under this Ordinance, the UDO Administrator will:

7.9.3.3.2.1. Review the application for conformity with this Ordinance. An application under this section is deemed to be complete unless the UDO Administrator provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The UDO Administrator may deem an application incomplete if there is insufficient evidence provided to show that the eligible facilities request will comply with federal, state, and local safety requirements. The UDO Administrator may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the eligible

facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

7.9.3.3.2.2. Issue a written decision approval on an eligible facilities request application within forty-five (45) days of such application being deemed complete.

7.9.3.3.2.3. Failure to issue a written decision within forty-five (45) calendar days shall constitute an approval of the application.

7.9.3.3.3. Application Review. The UDO Administrator's review of an application for the placement or construction of a new wireless support structure or substantial change of a wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the UDO Administrator may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. The UDO Administrator may not require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. The UDO Administrator may not require proprietary, confidential, or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunication traffic studies. In reviewing an application, the UDO Administrator may review the following:

7.9.3.3.3.1. Applicable public safety, land use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.

7.9.3.3.3.2. Information or materials directly related to an identified public safety, land development, or zoning issue including evidence that no existing or previously approved wireless support structure can reasonably be used for the wireless facility placement instead of the construction of a new wireless support structure, that residential, historic, and designated scenic areas cannot be served from outside the area, or that the proposed height of a new wireless support structure or initial wireless facility placement or a proposed height increase of a substantially modified wireless support structure, or replacement wireless support structure is necessary to provide the applicant's designed service.

7.9.3.3.3.3. The UDO Administrator may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing wireless support structure or structures within the applicant's search ring. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the existing wireless support structure is unwilling to enter into a contract for such use at fair market value. The UDO Administrator may require information necessary to determine whether collocation on existing wireless support structures is reasonably feasible.

7.9.3.3.3. Building Permit. The Building Inspector shall issue a building permit following approval of the application under Administrative Review in accordance with the process and standards in this Ordinance.

7.9.4. Conditional Use Permit Process.

7.9.4.1. Any Wireless Facility or Wireless Support Structures not meeting the requirements of Section 7.9.2.1 or 7.9.2.3 above, may be permitted in all zoning districts upon the granting of a Conditional Use Permit, subject to:

7.9.4.1.1. The submission requirements of Section 7.9.4.2. below; and

7.9.4.1.2. The applicable standards of Section 7.9.5 below; and

7.9.4.1.3. The requirements of the conditional use permit process in Section 4.5.

7.9.4.2. Content of Conditional Use Permit Application Package. All Conditional Use permit application packages must contain the following in addition to those requirements contained in Sections 4.5 and 5.6.

7.9.4.2.1. Written description and scaled drawings of the proposed Wireless Support Structure or Wireless Facility, including structure height, ground and structure design, and proposed materials.

7.9.4.2.2. Number of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Wireless Support Structure.

7.9.4.2.3. Line-of-sight diagram or photo simulation, showing the proposed Wireless Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.

7.9.4.2.4. A statement of the proposed Wireless Support Structure will be made available for Collocation to other service providers at commercially reasonable rates, provided space is available and consistent with Section 7.9.5.1.1 of this Ordinance.

7.9.4.3. Approval Schedule. Within one hundred fifty (150) calendar days of the receipt of an application under this section, the City Council upon recommendation of the Planning Board will:

7.9.4.3.1. Complete the process for reviewing the application for conformity with this Ordinance. An application under this section is deemed to be complete unless the UDO Administrator notifies the applicant in writing, within thirty (30) calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant may take thirty (30) calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within thirty (30) calendar days, the application shall be reviewed and process within one hundred fifty (150) calendar days from the initial date the application was received. If the applicant requires a period of time beyond thirty (30) calendar days to cure the specific deficiencies, the one hundred fifty (150) calendar days deadline for review shall be extended by the same period of time.

7.9.4.3.2. Make a final decision to approve or disapprove the application.

7.9.4.3.3. Advise the applicant in writing of its final decision. If the City Council denies an application, it must provide written justification of the denial.

7.9.4.3.4. Failure to issue a written decision within one hundred fifty (150) calendar days shall constitute an approval of the application.

7.9.5. General Standards and Design Requirements.

7.9.5.1. Design.

7.9.5.1.1. Wireless Support Structures shall be subject to the following:

7.9.5.1.1.1. Shall be engineered and constructed to accommodate a minimum number of Collocations based upon their height:

7.9.5.1.1.1.1. Support structures sixty (60) to one hundred (100) feet shall support at least two (2) telecommunications providers.

7.9.5.1.1.1.2. Support structures greater than one hundred (100) feet but less than one hundred fifty (150) feet shall support at least three (3) telecommunications providers.

7.9.5.1.1.2. The Equipment Compound area surrounding the Wireless Support Structure must be of sufficient size to accommodate Accessory Equipment for the appropriate number of telecommunications providers in accordance with Section 7.9.5.1.1.1.

7.9.5.1.2. Concealed Wireless Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible. Antennas must be enclosed, camouflaged, screened, obscured, or otherwise not readily apparent to a casual observer.

7.9.5.1.3. Upon request of the Applicant, the UDO Administrator may waive the requirement that new Wireless Support Structures accommodate the Collocation of other service providers if it finds that Collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

7.9.5.1.4. A Monopole or Replacement Pole shall be permitted within utility easements or rights-of-way, in accordance with the following requirements:

7.9.5.1.4.1. The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.

7.9.5.1.4.2. The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.

7.9.5.1.4.3. The height of the Monopole or Replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.

7.9.5.1.4.4. Monopoles and the Accessory Equipment shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.

7.9.5.1.4.5. Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by subsection 7.9.5.1.4.3 above.

7.9.5.1.4.6. Poles that use the structure of a utility tower for support are permitted. Such poles may extend up to twenty (20) feet above the height of the utility tower.

7.9.5.2. Setbacks. Unless otherwise stated herein, each Wireless Support Structure shall be set back from all property lines a distance equal to its engineered fall zone.

7.9.5.3. Height. In residential districts, Wireless Support Structures shall not exceed a height equal to one hundred ninety-nine (199) feet from the base of the structure to the top of the highest point, including appurtenances. Notwithstanding the foregoing, the UDO Administrator shall have the authority to vary the foregoing height restriction upon the request of the applicant. With its waiver request, the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the UDO Administrator.

7.9.5.4. Aesthetics.

7.9.5.4.1. Lighting and Marking. Wireless Facilities or Wireless Support Structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).

7.9.5.4.2. Signage. Signs located at the Wireless Facility shall be limited to ownership and contact information, FCC antenna registration number (if required)

and any other information as required by government regulation. Commercial advertising is strictly prohibited. Notwithstanding the foregoing, nothing in this Ordinance shall prohibit signage that is approved for other uses on property on which Wireless Facilities are located (i.e., approved signage at locations on which Concealed Facilities are located).

7.9.5.5. Accessory Equipment. Accessory Equipment, including any buildings, cabinets, or shelters, shall be used only to house equipment and other supplies in support of the operation of the Wireless Facility or Wireless Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.

7.9.5.6. Fencing.

7.9.5.6.1. Ground mounted Accessory Equipment and Wireless Support Structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the UDO Administrator.

7.9.5.6.2. The UDO Administrator may waive the requirement of Section 7.9.5.6.1 if it is deemed that a fence is not appropriate or needed at the proposed location.

7.9.6. Miscellaneous Provisions.

7.9.6.1. Abandonment and Removal. If a Wireless Support Structure is Abandoned, and it remains Abandoned for a period in excess of twelve (12) consecutive months, the City of Kinston may require that such Wireless Support Structure be removed only after first providing written notice to the owner of the Wireless Support Structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the Wireless Support Structure within sixty (60) days of receipt of said written notice. In the event the owner of the Wireless Support Structure fails to reclaim the Wireless Support Structure within the sixty (60) day period, the owner of the Wireless Support Structure shall be required to remove the same within six (6) months thereafter. The City of Kinston shall ensure and enforce removal by means of its existing regulatory authority, with costs of removal charged to the owner.

7.9.6.2. Multiple Uses on a Single Parcel or Lot. Wireless Facilities and Wireless Support Structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

7.9.7. Wireless Facilities and Wireless Support Structures in Existence on the Date of Adoption of this Ordinance.

7.9.7.1. Wireless Facilities and Wireless Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.

7.9.7.2. Activities at Non-Conforming Wireless Support Structures. Notwithstanding any provision of this Ordinance:

7.9.7.2.1. Ordinary Maintenance may be performed on a Non-Conforming Wireless Support Structure or Wireless Facility.

7.9.7.2.2. Collocation of Wireless Facilities on an existing non-conforming Wireless Support Structure shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use and shall be permitted through the Administrative Approval process defined in Section 7.9.3; provided that the collocation does not substantially modify the size of the equipment compound at that location or otherwise substantially modify the existing non-conformity.

7.9.7.2.3. Substantial Changes may be made to non-conforming Wireless Support Structures utilizing the Conditional Use Permit process defined in Section 4.5 of this Ordinance.

7.9.8. Leases of Property by the City of Kinston for Communication Towers. *(Amended 11/20/2017)*

7.9.8.1. Any property owned by the city may be leased or rented for such terms and upon such conditions as the City Council may determine, but not for longer than 10 years (except as otherwise provided in subsection 7.9.8.4 of this section) and only if the City Council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included.

7.9.8.2. Property may be rented or leased only pursuant to a resolution of the City Council authorizing the execution of the lease or rental agreement adopted at a regular City Council meeting upon 30 days public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the Council's intent to authorize the lease or rental at its next regular meeting.

7.9.8.3. No public notice as required by subsection 7.9.8.2 of this section need be given for resolutions authorizing leases or rentals for terms of one year or less, and the City Council may delegate to the City Manager or some other city administrative officer authority to lease or rent city property for terms of one year or less.

7.9.8.4. Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property.

7.9.8.5. Notwithstanding subsection 7.9.8.4 of this section, the City Council may approve a lease without treating that lease as a sale of property for any of the following reasons:

7.9.8.5.1. For the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 25 years.

7.9.8.5.2. For the siting and operation of a tower, as that term is defined in G.S. 146-29.2(a)(7), for communication purposes for a term up to 25 years.

7.9.9. Small Wireless Facilities. *(Amended 11/20/2017)*

7.9.9.1. Applicability.

7.9.9.1.1. The City of Kinston shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility. This subsection does not apply to a stadium or athletic facility owned or otherwise controlled by the City. This subsection does not prohibit the enforcement of applicable codes.

7.9.9.1.2. Nothing contained in this Section shall amend, modify, or otherwise affect any easement between private parties. Any and all rights for the use of a right-of-way are subject to the rights granted pursuant to an easement between private parties.

7.9.9.1.3. Except as provided in this Section or otherwise specifically authorized by the General Statutes, the City of Kinston may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way of State-maintained highways or City rights-of-way by a provider authorized by State law to operate in the rights-of-way of State-maintained highways or City rights-of-way and may not regulate any communications services.

7.9.9.1.4. Except as provided in this Section or specifically authorized by the General Statutes, the City may not impose or collect any tax, fee, or charge to provide a communications service over a communications facility in the right-of-way.

7.9.9.1.5. The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this Section does not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the right-of-way.

7.9.9.2. Permitting Process.

7.9.9.2.1. Small wireless facilities that meet the height requirements of Section 7.9.9.3.2 shall only be subject to administrative review and approval under subsection 7.9.9.2.2 of this subsection if they are collocated (i) in a City right-of-way within any zoning district or (ii) outside of City rights-of-way on property other than single-family residential property.

7.9.9.2.2. The City of Kinston shall require an applicant to obtain a permit to collocate a small wireless facility. The City shall receive applications for, process, and issue such permits subject to the following requirements:

7.9.9.2.2.1. The City may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes in-kind contributions to the City such as the reservation of fiber, conduit, or pole space for the City.

7.9.9.2.2.2. The wireless provider completes an application as specified in form and content by the City. A wireless provider shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.

7.9.9 .2.2.3. A permit application shall be deemed complete unless the City provides notice otherwise in writing to the applicant within thirty (30) days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed

complete on resubmission if the additional materials cure the deficiencies identified.

7.9.9.2.2.4. The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the City fails to approve or deny the application within forty-five (45) days from the time the application is deemed complete or a mutually agreed upon time frame between the City and the applicant.

7.9.9.2.2.5. The City may deny an application only on the basis that it does not meet any of the following: (i) the City's applicable codes, (ii) local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, City utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; or (iii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way. The City must (i) document the basis for a denial, including the specific code provisions on which the denial was based and (ii) send the documentation to the applicant on or before the day the City denies an application. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days of the denial without paying an additional application fee. The City shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

7.9.9.2.2.6. An application must include an attestation that the small wireless facilities shall be collocated on the utility pole, City utility pole, or wireless support structure and that the small wireless facilities shall be activated for use by wireless services provider to provide service no later than one year from the permit issuance date, unless the City and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

7.9.9.2.2.7. An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of the City shall be allowed at the applicant discretion to file a consolidated application for no more than 25 separate facilities and receive a permit for the collocation of all the small wireless facilities meeting the requirements of this section. The City may

remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations (i) for which incomplete information has been provided or (ii) that are denied. The City may issue a separate permit for each collocation that is approved.

7.9.9.2.2.8. The permit shall specify that collocation of the small wireless facility shall commence within six months of approval and shall be activated for use no later than one year from the permit issuance date, unless the City and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

7.9.9.2.3. The City may charge an application fee that shall not exceed the lesser of (i) the actual, direct, and reasonable costs to process and review applications for collocated small wireless facilities; (ii) the amount charged by the City for permitting of any similar activity, or (iii) one hundred dollars ($100.00) per facility for the first five small wireless facilities addressed in an application, plus fifty dollars ($50.00) for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the City has the burden of proving that the fee meets the requirements of this subsection.

7.9.9.2.4. The City may impose a technical consulting fee for each application, not to exceed five hundred dollars ($500.00), to offset the cost of reviewing and processing applications required by this section. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. The City may engage an outside consultant for technical consultation and the review of an application. The fee imposed by the City for the review of the application shall not be used for either of the following:

7.9.9.2.4.1. Travel expenses incurred in the review of a collocation application by an outside consultant or other third party.

7.9.9.2.4.2. Direct payment or reimbursement for an outside consultant or other third party based on a contingent fee basis or results-based arrangement.

In any dispute concerning the appropriateness of a fee, the City has the burden of proving that the fee meets the requirements of this subsection.

7.9.9.2.5. The City shall require a wireless services provider to remove an abandoned wireless facility within 180 days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the City shall cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is 180 days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the City reasonable evidence that it is diligently working to place such wireless facility back in service.

7.9.9.2.6. The City shall not require an application or permit or charge fees for (i) routine maintenance; (ii) the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or (iii) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or City utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the City rights-of-way and who is remitting taxes under NCGS 105-164.4(a)(4c) or NCGS 105-164.4(a)(6).

7.9.9.2.7. Nothing in this section shall prevent a City from requiring a work permit for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the City right-of-way.

7.9.9.3. Use of City of Kinston Public Right-of-Way.

7.9.9.3.1. The City shall not enter into an exclusive arrangement with any person for use of City rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures or the collocation of small wireless facilities.

7.9.9.3.2. Subject to the requirements of Section 7.9.9.2, a wireless provider may collocate small wireless facilities along, across, upon, or under any Town right-of-way. Subject to the requirements of this section, a wireless provider may place, maintain, modify, operate, or replace associated utility poles, City utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any City right-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and City utility poles associated with the collocation

of small wireless facilities, along, across, upon, or under any City right-of-way shall be subject only to review or approval under Section 7.9.9.2 if the wireless provider meets all the following requirements:

7.9.9.3.2.1. Each new utility pole and each modified or replacement utility pole or City utility pole installed in the right-of-way shall not exceed 50 feet above ground level.

7.9.9.3.2.2. Each new small wireless facility in the right-of-way shall not extend more than 10 feet above the utility pole, City utility pole, or wireless support structure on which it is collocated.

7.9.9.3.3. In no instance in an area zoned single-family residential where the existing utilities are installed underground may a utility pole, City utility pole, or wireless support structure exceed forty (40) feet above ground level, unless the City grants a waiver or variance approving a taller utility pole, City utility pole, or wireless support structure.

7.9.9.3.4. The City may assess a right-of-way charge under this section for use or occupation of the right-of-way by a wireless provider. The right-of-way charge shall not exceed $50.00 per year.

7.9.9.3.5. Nothing in this section is intended to authorize a person to place, maintain, modify, operate, or replace a privately-owned utility pole or wireless support structure or to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.

7.9.9.3.6. The City shall require a wireless provider to repair all damage to a City right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, City utility poles, or utility poles and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the City within a reasonable time after written notice, the City may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The City shall maintain an action to recover the costs of the repairs.

7.9.9.3.7. A wireless provider may apply to the City to place utility poles in the City rights-of-way, or to replace or modify utility poles or City utility poles in the public rights-of-way, to support the collocation of small wireless facilities. The City shall accept and process the application in accordance with the provisions of Section 7.9.9.2.2, applicable codes, and other local codes governing the placement of utility poles or City utility poles in the City rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or City utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application.

7.9.9.4. Access to City Utility Poles to Install Small Wireless Facilities.

7.9.9.4.1. The City may not enter into an exclusive arrangement with any person for the right to collocate small wireless facilities on City utility poles. The City shall allow any wireless provider to collocate small wireless facilities on its City utility poles at just, reasonable, and nondiscriminatory rates, terms, and conditions, but in no instance may the rate exceed fifty dollars ($50.00) per City utility pole per year.

7.9.9.4.2. A request to collocate under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the City to be reimbursed by the wireless provider. In granting a request under this section, the City shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration.

7.9.9.4.3. Following receipt of the first request from a wireless provider to collocate on a City utility pole, the City shall, within 60 days, establish the rates, terms, and conditions for the use of or attachment to the City utility poles that it owns or controls. Upon request, a party shall state in writing its objections to any proposed rate, terms, and conditions of the other party.

7.9.9.4.4. In any controversy concerning the appropriateness of a rate for a collocation attachment to a City utility pole, the City has the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the pole for such period.

7.9.9.4.5. The City shall provide a good-faith estimate for any make-ready work necessary to enable the City utility pole to support the requested collocation, including pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good-faith estimate by the applicant. For purposes of this section, the term "make-ready work" means any modification or replacement of a City utility pole necessary for the City utility pole to support a small wireless facility in compliance with applicable safety requirements, including the National Electrical Safety Code, that is performed in preparation for a collocation installation.

7.9.9.4.6. The City shall not require more make-ready work than that required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to preexisting or prior damage or noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include any consultant fees or expenses.

7.9.9.4.7. Nothing in this Part shall be construed to apply to an entity whose poles, ducts, and conduits are subject to regulation under Section 224 of the Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended, or under NCGS 62-350.

7.9.9.4.8. This section shall not apply to an excluded entity. Nothing in this section shall be construed to affect the authority of an excluded entity to deny, limit, restrict, or determine the rates, fees, terms, and conditions for the use of or attachment to its utility poles, City utility poles, or wireless support structures by a wireless provider. This section shall not be construed to alter or affect the provisions of NCGS 62-350, and the rates, terms, or conditions for the use of poles, ducts, or conduits by communications service providers, as defined in NCGS 62-350, are governed solely by NCGS 62-350. For purposes of this section, "excluded entity" means (i) a City that owns or operates a public enterprise pursuant to Article 16 of this Chapter 160A of the General Statutes consisting of an electric power generation, transmission, or distribution system or (ii) an electric membership corporation organized under Chapter 117 of the General Statutes that owns or controls poles, ducts, or conduits, but which is exempt from regulation under Section 224 of the Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended.

SECTION 7.10 ARTISAN'S WORKSHOP.

Artisan's workshops shall be permitted in accordance with Section 6.5, provided all artisan production is conducted inside an enclosed building. Workshops exceeding 3,000 square feet require approval of a conditional use permit.

SECTION 7.11 CHEMICAL AND HAZARDOUS MATERIAL STORAGE/TREATMENT.

7.11.1. The use shall comply with the Federal Resource Conservation and Recovery Act of 1976, as amended (PL 94-580) and the North Carolina Solid Waste Management Act, as amended (Article 13B, GS 130-166.16) for design, siting, and materials to be stored and treated.

7.11.2. All storage, treatment, and loading facilities handling hazardous materials will be located at least two hundred (200) feet from any property line and at least one thousand two hundred fifty (1,250) feet from any lot not located in an industrial district. The required buffer area shall contain a sufficient amount of natural or planted vegetation so that such facilities are screened visually from an adjoining property not located in an industrial district.

7.11.3. A security fence at least seven (7) feet in height with a minimum nine-gauge fabric and three (3) strands of barbed wire shall surround all facilities for the storage and handling of hazardous materials.

7.11.4. Vehicular access to the operation will be provided only by way of a US- or NC-numbered highway or an industrial area access road.

7.11.5. All surface water and groundwater on the property will be protected so as to minimize, to the greatest extent possible, the probability of contamination by hazardous materials.

7.11.6. All sanitary sewer and stormwater management systems on the property will be protected so as to minimize, to the greatest possible extent, the probability of contamination by hazardous materials. A stormwater management plan shall be prepared by the applicant and submitted to the city for review by the city's engineer and the Environmental Management Division of the North Carolina Department of Environment and Natural Resources. A NPDES permit for stormwater discharge shall also be obtained, if applicable.

SECTION 7.12 BULK PETROLEUM PLANTS AND LP GAS AND STORAGE.

7.12.1. The use must meet the requirements established by the fire prevention code of the National Board of Fire Underwriters and the latest edition of the ■Flammable and Combustible Liquids Code, NPFA 30" of the National Fire Protection Association.

7.12.2. All storage tanks and loading facilities will be located at least two hundred (200) feet from any property line. The buffer area required by Article 9, Part I shall contain a sufficient amount of natural or planted vegetation so that such facilities are screened visually from an adjoining property not located in an industrial district.

7.12.3. Vehicle access to the use will be provided only by way of a US- or NC-numbered highway or an industrial area access road.

7.12.4. All principal and accessory structures and off-street parking and service areas will be separated by a twenty-five foot buffer from any abutting property.

SECTION 7.13 GAMEROOMS, BINGO, BILLIARDS AND POOL HALLS, DANCE HALLS, BARS, NIGHT CLUBS, AND SOCIAL CLUBS.

7.13.1. Within a B-1 zoning district, a location may not be used for a game room, bingo, billiard and pool hall, dance hall, bar, nightclub, or social club if it is within one hundred (100) feet of a church or if it is within three hundred (300) feet of a presently licensed, approved, and operating use listed in this section – i.e. a bingo hall shall not be within 300 feet of a bar or any other use listed in this section, including another bingo hall. All locations approved for any such use shall be permitted until said location ceases to be used for such business activity for more than ninety (90) days or its conditional use permit is surrendered to or revoked by the city. *(Amended 11/20/2017)*

7.13.2. Within the B-2 (Central Business) District, there shall a minimum separation of one hundred (100) feet between the aforementioned uses and a church or other place of worship. There shall be no minimum separation between two similar establishments – i.e., a bar and a bingo/arcade/ social club etc. or a bar and a bar shall be permitted with no separation requirement. *(Amended 11/20/2017)*

7.13.3. Eligible activities enumerated in subsection 7.13.1 above shall be subject to conditional use permit procedures and requirements as set forth in Section 4.5 including those previously licensed and existing when one enumerated use is being applied for in lieu of or supplementary to another enumerated use requiring or for which a conditional use permit has been previously issued.

7.13.4. Permittees shall, annually or before September 1st, provide information to the city setting forth property ownership, listings and status of all state, county, and municipal licenses held, and name(s) of manager(s) or operator(s) if different from the permittee or owner. Failure to provide such information shall result in permit review.

7.13.5. Upon complaint from any person, a public hearing may be scheduled by the City Council to determine what additional conditions, if any, may be needed to protect the public health, safety, and welfare. Upon a finding that there has been an increase in the volume, intensity, or frequency of the use or a use different than set forth in the conditional use permit, the City Council after the public hearing may modify, suspend, or revoke the conditional use permit. *(Amended 11/20/2017)*

SECTION 7.14 GOLF COURSES.

7.14.1. All golf course greens, tees, and fairways shall be set back at least fifty (50) feet from any property line.

7.14.2. All buildings shall be setback at least one hundred (100) feet from any property line.

SECTION 7.15 HORSEBACK RIDING STABLES.

7.15.1. The use shall be located on a lot or tract of at least five (5) acres in area.

7.15.2. The use shall be set back a minimum of fifty (50) feet from an adjoining street right-of-way or property line.

SECTION 7.16 FAMILY CARE HOMES. *(Amended 11/20/2017)*

7.16.1. All Family Care Homes must be licensed by the State of North Carolina.

7.16.2. As defined by NC General Statutes Chapter 168-21, family care homes must be located no closer than one-half (½) mile from any other family care home. As provided for in Section 4.10.2, a variance to the ½ mile separation requirement may be obtained when the separation is accomplished by man-made features (i.e., railroad yards, freeways) or natural features (i.e., rivers, wetlands) and provides sufficient separation to ameliorate the harmful effects that justified the statutory separation.

SECTION 7.17 DWELLING, MANUFACTURED HOME (ON A SINGLE LOT).

7.17.1. The area beneath a manufactured home must be fully enclosed with durable skirting within ninety (90) days of installation.

7.17.2. Manufactured homes shall have a continuous and permanent skirting installed of brick, cement block, or a corrosive-resistant nonreflective skirt extending from the bottom of the manufactured home to the ground. Said skirt shall be provided with a door for crawlspace measuring at least eighteen inches by twenty-four inches (18" x 24") and installed in a uniform manner.

7.17.3. Manufactured homes with or without toilet facilities that cannot be connected to a sanitary sewer system shall not be permitted.

7.17.4. Manufactured homes shall have the tongue, axles, transportation lights, and towing apparatus removed subsequent to final placement.

7.17.5. Except as specifically allowed in this subsection 7.17.5, manufactured homes shall not exceed an age of seven (7) years old from the time the unit left the manufacturer to the date applying for the permit. The age limitation in this subsection 7.17.5 shall not apply if (1) the manufactured home is being removed from an area of special flood hazard inside the city limits as defined in Appendix A or (2) the manufactured home is a repetitive loss structure inside the city limits as defined in Appendix A, and (3) the land upon which the manufactured home is being removed is either conveyed to the city, or in the city's discretion, encumbered with permanent restriction to prohibit future development.

7.17.6. Manufactured homes shall be provided with permanent steps, porch, or similar suitable entry, meaning steps that are not portable.

7.17.7. Manufactured homes are not permitted in the arts and cultural overlay district.

SECTION 7.18 MULTI-FAMILY RESIDENCES IN NONRESIDENTIAL DISTRICTS.

7.18.1. Multi-family residences located in any permitted nonresidential zoning district except B-2 shall comply with the minimum lot area, width, and setback requirements of the RA-6 district. Within the B-2 district, there are no minimum lot area, density, nor setback requirements.

7.18.2. The minimum spacing between multi-family residential structures shall be twenty (20) feet.

SECTION 7.19 MANUFACTURED HOME PARKS.

7.19.1. The minimum lot area for a manufactured home park is three (3) acres; the minimum number of manufactured home spaces for a manufactured home park is six (6) spaces.

7.19.2. Manufactured home parks shall contain only Class B or Class C manufactured homes.

7.19.3. The manufactured home shall be located on ground that is not susceptible to flooding. The park shall be graded so as to prevent any water from ponding or accumulating on the premises. All ditch banks shall be sloped and seeded.

7.19.4. Each manufactured home space shall contain a minimum of five thousand (5,000) square feet where public water and sewer service is available and twenty thousand (20,000) square feet where either public water or sewer services is unavailable unless a larger or smaller square footage is required by the county health department.

7.19.5. No manufactured home shall be located closer than twenty (20) feet from another manufactured home or any other principal building within the manufactured home park. No manufactured home shall be located closer than forty (40) feet from a public street right-of-way or twenty (20) feet from a private, interior manufactured home park street.

7.19.6. Recreational space in each manufactured home park shall be provided in accordance with Article 9, Part VI, Recreational Facilities and Open Space.

7.19.7. Existing manufactured home parks which provide manufactured home spaces having a width or area less than that described above may continue to operate with spaces of existing width and area, but in no event shall any such nonconforming manufactured home park be allowed to expand unless such extension meets the requirements of this Ordinance.

7.19.8. The area beneath the manufactured home must be fully enclosed with durable skirting within ninety (90) days of placement in the manufactured home park.

7.19.9. Manufactured homes shall have a continuous and permanent skirting installed of brick, cement block, or corrosive-resistant nonreflective skirt extending from the bottom of the manufactured home to the ground. Said skirt shall be provided with a door for crawlspace measuring at least eighteen inches by twenty-four inches (18" x 24") and installed in a uniform manner.

7.19.10. Manufactured homes with or without toilet facilities that cannot be connected to a sanitary sewer shall not be permitted in a manufactured home park.

7.19.11. Manufactured homes shall have the tongue, axles, transportation lights, and towing apparatus removed subsequent to final placement.

7.19.12. Manufactured home shall be provided with a permanent steps, porch, or similar suitable entry, meaning steps that are not portable.

7.19.13. Each manufactured home space shall be graded, the graded areas grassed to prevent erosion, and provide adequate storm drainage (including retention pond facilities, when applicable) away from the manufactured home. Each manufactured home space shall abut upon an improved paved interior drive. The dimensions of all manufactured home spaces shall be shown.

7.19.14. Interior Drives.

All manufactured home spaces shall abut upon an interior drive of no less than 36 feet in right-of-way, which shall have unobstructed access to a public street or highway, it being the intent of this section that manufactured home spaces shall not have unobstructed access to public streets or highways except through said interior drive. Interior drives shall be privately owned and maintained. All interior drives shall be graded to their full right-of-way and shall have a road of at least 20 feet in width. Minimum improvements shall be a compacted base of four inches of #7 ABC stone. Roads shall be maintained with paved surface of 2" of asphalt. Graded and stabilized road shoulders and ditches shall be provided. Standing water shall not be permitted.

7.19.14.1. Cul-De-Sacs. Any interior drive designed to be closed shall have a turnaround at the closed end with a minimum right-of-way diameter of 100 feet. The entire right-of-way of such turnaround shall be graded and usable for the turning of motor vehicles. Cul-de-sacs shall not exceed 600 feet in length.

7.19.14.2. Access to the manufactured home park must be via a public road and not located in a flood hazard area. The following street and parking standards shall be complied with:

7.19.14.2.1. Maintenance of such streets shall be provided by the owner or operator of the park, who will be required to post a bond for the first years maintenance, amount and terms to be determined by the City Council.

7.19.14.2.2. Streets or drives within the manufactured home park shall intersect as nearly as possible at right angles, and no street shall intersect at less than 60 degrees. Where a street intersects a public street or road, the design standards of the NC Department of Transportation shall apply.

7.19.14.2.3. Proposed streets, which are obviously in alignment with others, existing and named, shall bear the assigned name of the existing streets. In no case shall the name of proposed streets duplicate or be phonetically similar to existing street names, irrespective of the use of a suffix: Street, Avenue, Boulevard, Drive, Place, Court, etc. New manufactured home park names shall not duplicate or be similar to any existing manufactured home park name in the city. Street name signs that are in compliance with current city policy are required and may be purchased from the city.

7.19.14.2.4. A minimum of two automobile parking spaces surfaced with a minimum of four inches of gravel shall be provided on each manufactured home space and shall not be located within any public right-of-way or within any street in the park.

7.19.14.2.5. All spaces within a manufactured home park shall be serially numbered for mailing address purposes. These numbers shall be displayed in the front of the manufactured home on the driveway side with four inch lettering.

7.19.14.2.6. When more than five rural mail boxes are used for mail delivery, the approval of the local Post Office Department and the District Highway Engineer shall be required.

7.19.15. Intersections.

Drives shall intersect as nearly as possible at right angles, and no drive shall intersect at less than 75 degrees. Where an interior drive intersects a public right-of-way, the design standards of the North Carolina Department of Transportation shall apply.

7.19.16. Spaces Numbered.

Each manufactured home space shall be identified by a permanent number which shall not be changed. All space numbers must be shown on the site development plan. The appropriate number of each manufactured home space must be permanent and visibly displayed on the space. Each number shall be placed on a concrete, wood, metal, or any permanent post and conspicuously located on the lot.

7.19.17. Refuse Collection Facilities.

The park owner is responsible for seeing to refuse collection. All refuse shall be collected at least once/week or more if the need is indicated. When manufactured home parks are located in the Kinston city limits, the applicable sanitation regulations shall be complied with.

7.19.18. Service, Administration, and Other Buildings.

7.19.18.1. Within a manufactured home park, one manufactured home may be used as an administrative office. Other administrative and service buildings housing sanitation and laundry facilities or any other such facilities shall comply with all applicable ordinances, codes, and statutes regarding buildings, electrical installations, plumbing, and sanitation systems.

7.19.18.2. All service buildings, commercial structures, and the grounds of the park shall be maintained in a clean condition and kept free from any condition that will menace the health of any occupant or the public or constitute a nuisance.

7.19.19. Structural Additions.

All structural additions to manufactured homes other than those which are built into the unit and designed to fold out or extend from it shall be erected only after a building permit is obtained, and such additions shall conform to the North Carolina Building Code, and shall meet the standards of special regulations adopted with respect to such additions. The building permit shall specify whether such structural additions may remain permanently, must be removed when the manufactured home is removed, or must be removed within a specified length of time after the manufactured home is removed. Structural alterations existing at the time of passage of this Ordinance shall be removed within thirty (30) days after the manufactured home which they serve is moved unless attached to another manufactured home on the same site within that period.

7.19.20. Storage.

Storage of a manufactured home or recreational vehicle is prohibited.

7.19.21. Management.

In each manufactured home park, the permittee or duly authorized attendant or caretaker shall be in charge at all times to keep the manufactured home park, its facilities and equipment in a clean, orderly, safe, and sanitary condition.

7.19.22. Manufactured Home Park.

It shall be the duty of the operator of a manufactured home park to keep an accurate register containing a record of all registered occupants. The operator shall keep the register available at all

times for inspection by law enforcement officials, public health officials, and other officials whose duties necessitate acquisition of the information contained in the register.

7.19.23. Sales in Manufactured Home Parks.

7.19.23.1. It shall be unlawful to sell on a commercial basis manufactured homes or trailers within manufactured home parks.

7.19.23.2. It shall be unlawful to sell a manufactured home space(s) within the manufactured home parks.

7.19.23.3. Except for accessory uses, it shall be unlawful to operate any business within a manufactured home park.

SECTION 7.20 PLANNED RESIDENTIAL DEVELOPMENTS.

7.20.1. Planned residential developments (PRDs) are permissible only as a conditional use on tracts of at least five (5) acres located in the districts indicated in Section 6.5, Table of Uses and Activities.

7.20.2. The overall density of a tract developed by a PRD shall be determined as provided in Section 6.6 for the underlying district in which the PRD is located.

7.20.3. Permissible types of residential uses within a PRD include single-family detached dwellings, single-family attached dwellings, two-family residences, and multi-family residences. At least fifty (50) percent of the total number of dwelling units must be single-family detached residences on lots of at least six thousand (6,000) square feet.

7.20.4. To the extent practicable, the two-family and multi-family portions of a PRD shall be developed more toward the interior rather than the periphery of the tract so that the single-family detached residences border adjacent single-family detached properties.

7.20.5. In a planned residential development, the screening requirements that would normally apply where two-family and multi-family development adjoins a single-family development shall not apply within the tract developed as a planned residential development, but all screening requirements shall apply between the tract so developed and adjacent lots.

SECTION 7.21 PLANNED UNIT DEVELOPMENT (PUD).

7.21.1. General Description

7.21.1.1. Purpose. The purpose of the PUD District is to establish a mechanism for a person to propose a commercial, industrial or residential mixed use development that is innovative but which does not strictly comply with the provisions of the zone in which the property is located and cannot be achieved through traditional zoning.

7.21.1.2. Intent. The intent of the PUD District is to promote high quality developments while allowing greater flexibility in the design of such developments. The PUD should produce:

7.21.1.2.1. A maximum choice in the types of environment and dwelling units.

7.21.1.2.2. Common open space and recreation areas.

7.21.1.2.3. A pattern of development which preserves natural features and prevents soil erosion.

7.21.1.2.4. A creative approach to the use of land and related physical development.

7.21.1.2.5. An efficient use of land resulting in smaller networks of utilities and streets and thereby lowering costs.

7.21.1.2.6. Internally located commercial uses that serve surrounding residential areas.

7.21.1.2.7. An environment of stable character in harmony with the surrounding development.

7.21.1.2.8. Efficient transportation.

7.21.1.3. Approval. All PUD conditional use permits will be approved as specified in Section 4.5.

7.21.1.4. Minimum District Area. The minimum area required for property proposed for a Planned Unit Development District shall be 25 acres.

7.21.1.5. Within any lot developed as a Planned Unit Development, not more than thirty-five (35) percent of the total lot area may be developed for higher density residential purposes (RA-6 density) and not more than ten (10) percent of the total lot area may be developed for non-residential uses.

7.21.1.6. Zoning and Master Site Plan. The PUD is a combination of zoning designation and master site plan. A detailed site plan with specific uses as listed in the Table of Uses and Activities (Section 6.5) is required for conditional use approval. Once approved, the site plan becomes the guide for allowed uses in the PUD. Development must follow the site plan exactly. Failure in this respect will result in reversion of the property to the original zoning. Although design innovation is encouraged and flexibility is allowed, the PUD may not be used simply as a method of avoiding zoning regulations.

7.21.2. Permitted Uses.

The PUD submittal shall include a listing of the proposed land uses and the amount of land devoted to each. This list will substitute Article 6 and will specify the uses to be allowed. Any uses allowed must be identified/listed in Article 6. No other land uses will be allowed unless the PUD is revised through a rezoning process. All uses will be approved as conditional uses in accordance with Section 4.5 and must be identified in one or more of the following zoning districts: Residential (RA-20, RA-15, RA-12, RA-8, RA-7, RA-6, RA-5) and Non-residential (RO, O&I, B-2, SC, I-B, and I-1).

7.21.3. Modification of Development Standards.

The applicant shall provide a written description of the proposed permitted uses and development standards. This information will become part of the zoning ordinance of the PUD District.

7.21.3.1. Modifications Permitted. The PUD District may allow the following zoning and development standards to be modified:

7.21.3.1.1. Density;
7.21.3.1.2. Building setbacks;
7.21.3.1.3. Height of building or structure;
7.21.3.1.4. Lot size;
7.21.3.1.5. Lot width;
7.21.3.1.6. Lot depth;
7.21.3.1.7. Landscaping;
7.21.3.1.8. Required off-street parking spaces in instances of mixed residential/ commercial uses; and
7.21.3.1.9. Street widths.

7.21.3.2. Modifications Prohibited. The PUD District shall not allow the following development standards to be modified:

7.21.3.2.1. Sign requirements;
7.21.3.2.2. Flood damage prevention;
7.21.3.2.3. Site plan requirements;
7.21.3.2.4. Subdivision;
7.21.3.2.5. Landscaping;
7.21.3.2.6. Building design;
7.21.3.2.7. Parking;
7.21.3.2.8. Streets and sidewalks.

7.21.4. PUD Development Criteria.

7.21.4.1. Common Open Space Requirements. Common usable open space constitutes an essential ingredient in a Planned Unit Development and is one of the most basic and important design elements.

7.21.4.1.1. Standards. The common open space requirements are:

7.21.4.1.1.1. Minimum Area. A minimum of 20% of the total gross project area, exclusive of public right-of-way and parking lots, shall be devoted to common open space.

7.21.4.1.1.2. Equitable Distribution. Open space should be distributed more or less equitably throughout the PUD District in relationship to the dwelling units and other use areas that are intended to be served by the common open space.

7.21.4.1.1.3. Preservation. Adequate guarantees must be provided that the common open space areas as contained in the plan for the PUD District are preserved and maintained for those purposes only. A Property Owners♠ Association shall be required if other arrangements satisfactory to the City Council have not been made for improving, operating, and maintaining all such common open space areas. At the time the final plan and plat is submitted, the Articles of Incorporation and Bylaws of the Property Owners♠ Association shall be reviewed and approved by the City Council.

Additionally, the restrictive covenants which run with the land must be submitted and include similar provisions to preserve all open space areas.

7.21.4.1.1.4. Accessible. Common usable open space shall be open to tenants and customers within the PUD. Access by the general public is desired.

7.21.4.1.2. Common Open Space Determination. The required common open space may include:

7.21.4.1.2.1. Wetlands and water bodies, including the normal water surface area of unfenced retention ponds up to 50% of the required open space area.

7.21.4.1.2.2. Active detention ponds that include recreational equipment/ facilities.

7.21.4.1.2.3. Vegetated/landscaped area, excluding required parking lot landscaping requirements.

7.21.4.1.2.4. Pedestrian paths, trails, sidewalks (exclusive of those required by ordinance) and covered walkways.

7.21.4.1.2.5. Public plazas and hard surfaced recreation areas.

7.21.4.1.2.6. Public pools, tennis courts, basketball courts, baseball fields, soccer fields, or similar outdoor recreation facilities that are open to the residents and users of the PUD.

7.21.4.2. Parking and Off-Street Loading. All uses established within a Planned Unit Development District shall comply with the off-street parking and loading requirements as established in Article 9, Part III. However, the requirements for individual structures or lots may be met through either provision of adequate parking on the lot on which such structure is so located or upon adjacent property which is under the control of a Property Owners♠ Association to which said lot is an automatic participant. In no case, however, shall the cumulative requirements for all parking and off-street loading requirements be less than if said uses were individually established and located in any other zoning district within the city.

7.21.4.3. Perimeter Requirements. In order to assure compatibility with surrounding development, the developer shall submit specific information as to the setbacks, building height, coverage factors and other elements necessary for all perimeter lots that are adjacent to the boundary of the PUD District or adjacent to any boundary or perimeter street right-of-way. While no specific setback requirements are herein established, the Planning Board and City Council shall consider the nature, extent and character of the adjacent development and shall take into consideration the types of area regulations applicable to adjacent properties.

7.21.4.4. Density. The site plan shall clearly depict the proposed density by land use category. For purposes of calculating densities, net residential acres are defined as gross acres of the PUD site minus all public rights-of-way, and less the area of all parcels or lots devoted to commercial, industrial, or institutional uses not of a residential nature. Common open space that is owned and maintained by a Property Owners♠ Association shall be included in calculating the net residential acres available for all dwelling units that automatically belong to such an association. Where more than one (1) Property Owners♠ Association is to be created, then each common open space can only be attributed to the lot or dwellings which have automatic membership for that specific common open area.

7.21.4.5. Building Design Standards. Refer to Article 9, Part II, Building Facade Design.

SECTION 7.22 TEMPORARY EMERGENCY, CONSTRUCTION, AND REPAIR RESIDENCES.

7.22.1. Temporary residences and offices used on construction sites of nonresidential premises shall be removed immediately upon the completion of the project and prior to the issuance of a final certificate of occupancy.

7.22.2. Permits for temporary residences and offices to be occupied pending the construction, repair, or renovation of the permanent residential building on a site shall expire within six (6) months after the date of issuance, except that the UDO Administrator may renew such permit for one (1) additional period not to exceed six (6) months if he determines that such renewal is reasonably necessary to allow the proposed occupants of the permanent residential building to complete the construction, repair, renovation, or restoration work necessary to make such building habitable.

7.22.3. Class B and C manufactured homes are permissible temporary emergency, construction, or repair residences in all nonresidential zoning districts and in RA-15 and RA-5 districts.

SECTION 7.23 ADULT AND SEXUALLY ORIENTED BUSINESSES.

7.23.1. An adult or sexually oriented business shall be defined as any business activity, club, or other establishment which permits any person, employee, member, patron, or guest on its premises to exhibit any specified anatomical areas before any other person or persons.

7.23.2. No adult or sexually oriented business shall be permitted in any building:

7.23.2.1. On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet of any zoning district within which residential uses are permitted;

7.23.2.2. On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from a building used as a dwelling;

7.23.2.3. On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from a building in which an adult business or a sexually oriented business is located;

7.23.2.4. On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from a building used as a church, synagogue, or other house of worship.

7.23.2.5. On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from a building used as a public school or as a state licensed day care center;

7.23.2.6. On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from any lot or parcel on which a restaurant is located; and

7.23.2.7. On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from any lot or parcel on which a cemetery, public playground, public swimming pool, or public park is located.

SECTION 7.24 AUTOMOBILE SERVICE STATIONS/GAS SALES OPERATIONS.

7.24.1. Air compressors, hydraulic hoists, pits, repair equipment, greasing and lubrication equipment, auto washing equipment, and similar equipment shall be entirely enclosed within a building.

7.24.2. Certification by a registered engineer shall be required to ensure the prevention of petroleum and petroleum related product runoffs into the existing municipal storm drainage and sanitary sewer systems.

7.24.3. All garbage and refuse shall be stored in mechanical loading containers located near the rear of the lot or building, but not less than twenty (20) feet from any adjacent property lines unless the UDO Administrator determines that such a setback is not practicable. In such cases, the UDO Administrator may, as an alternative, require a lesser setback provided sufficient screening or enclosure is installed.

7.24.4. The open storage of one (1) or more wrecked or inoperable vehicles or parts of one (1) or more vehicles for ten (10) days or more shall be deemed a junkyard. An unlicensed vehicle stored for ten (10) days or more shall be deemed an inoperable vehicle.

SECTION 7.25 BATTERY CHARGING/EXCHANGE STATIONS.

Battery charging stations and battery exchange stations shall be permitted in accordance with Section 6.5, subject to the following requirements:

7.25.1. Electric vehicle charging stations should be reserved for parking and charging of electric vehicles only.

7.25.2. Electric vehicles may be parked in any space designated for public parking, subject to the restrictions that would apply to any other vehicle that would park in that space.

7.25.3. Battery Charging Stations. For land use compatibility purposes, the charging activity should be proportionate to the associated permitted use. Electric vehicle charging station(s) shall be permitted in a single-family garage designed to service the occupants of the home. Accessory single-family charging stations shall not exceed residential building code electrical limitations. Whereas, charging station(s) installed in a parking lot for non single-family residential use are expected to have intensive use and will be permitted to have multiple ▪rapid charging stations• to serve expected demand.

7.25.4. Battery Exchange Stations. Exchange stations are permitted in any commercial or industrial zoning district, provided, however, all other requirements for the building or space the use occupies can be satisfied, such as design review, fire code, and building code requirements. This use is specifically prohibited in exclusively residential or conservation/recreation zoning districts.

7.25.5. Design Criteria for Commercial and Multi-Family Development. The following criteria shall be applied to electric charging facilities.

7.25.5.1. Number Required. This is an optional improvement. No minimum number of stalls applies. Provided, if electric vehicle stalls are reserved for electric vehicles, care should be taken to ensure enough spots are available for all of a site's parking needs.

7.25.5.2. Generally. Location and provision of electric vehicle parking will vary based on the design and use of the primary parking lot, keeping in mind flexibility will be needed in various parking lot layout options.

7.25.5.3. Signage to Identify. Each charging station space should be posted with signage indicating the space is only for electric vehicle charging purposes. Days and hours of operations should be included if time limits or tow away provisions are to be enforced by the owner.

7.25.5.4. Maintenance. Charging station equipment should be maintained in all respects, including the functioning of the charging equipment.

7.25.5.5. Accessibility. Where charging station equipment is provided within an adjacent pedestrian circulation area, such as a sidewalk or accessible route to the building entrance, charging equipment should be located so as to not interfere with accessibility.

7.25.5.6. Lighting. Where charging station equipment is installed, adequate site lighting should also be provided unless charging is for daytime purposes only.

7.25.5.7. Notification of Station Specifics. Information on the charging station identifying voltage and amperage levels and any time of use, fees, or safety information.

7.25.5.8. Avoid the Most Convenient Parking Spaces. Stalls should not be located in the most convenient spots because this would encourage use by non electric vehicles.

7.25.5.9. Avoid Conflict with Handicap Spots. Stalls should generally not be located adjacent to handicap spots unless designed for handicapped use.

7.25.5.10. Design for Compatibility. Design should be appropriate to the location and use. Facilities should be able to be readily identified by electric cars but blended into the surrounding landscape/architecture for compatibility with the character and use of the site.

SECTION 7.26 BED & BREAKFAST.

7.26.1. A bed and breakfast shall be permitted only within a principal residential structure.

7.26.2. A bed and breakfast shall be located in a dwelling in which there is a resident owner or resident manager.

7.26.3. In residential districts, food service shall be available only to guests and not to the general public.

7.26.4. Signage shall be limited to one (1) identification sign not to exceed four (4) square feet in area and four (4) feet in height.

7.26.5. A bed and breakfast shall have vehicular access to a subcollector or higher classified street.

SECTION 7.27 CHILD CARE FACILITIES. *(Amended 11/20/2017)*

7.27.1. Child Care Center.

7.27.1.1. When a center is licensed for six to twenty-nine children, inclusive, there shall be 75 square feet per child of outdoor play area for the total number of children for which the center is licensed. In addition, the total number of children on the playground shall not exceed the number the space will accommodate at 75 square feet per child. When a center is licensed for 30 or more children, there shall be 75 square feet per child of outdoor play area for at least one-half of the total number for which the center is licensed, provided that the minimum amount of space on the outdoor play area shall be enough to accommodate at least 30 children. The outdoor play area shall provide an area that is shaded by a building, awnings, trees, or other methods. The outdoor area shall be designed so that staff is able to see and easily supervise the entire area.

7.27.1.2. If a conditional use permit is required, the permit shall establish the hours of operation.

7.27.1.3. Minimum paved off-street parking spaces: Two spaces plus one for each employee.

7.27.1.4. Minimum paved off-street loading and unloading area: In addition to the off-street parking areas, there shall be sufficient paved driveway to accommodate at least two autos at one time for the purpose of loading and unloading passengers.

7.27.1.5. The child care center shall have a specified plan for ingress and egress.

7.27.1.6. No child may remain on the premises of a child care center for more than twenty-four (24) consecutive hours in one (1) stay.

7.27.2. Family Child Care Home.

In addition to the other standards set forth in this Ordinance, each Family Child Care Home (FCCH) must meet the following requirements:

7.27.2.1. A Family Child Care Home may have no more than eight (8) children. Of the children present at any one time, no more than five (5) shall be preschool-aged, not including the operator's own preschool-aged children.

7.27.2.2. The maximum hours of operator are 7:00 am to 6:00 pm, Monday through Friday.

7.27.2.3. No signage advertising the Family Child Care Home is allowed.

7.27.2.4. The building in which the Family Child Care Home is located may not be located closer than 500 feet to any other building housing another FCCH or Child Care Center; and

7.27.2.5. The home daycare must be licensed through the NC Department of Health and Human Services.

Violations of subsections 7.27.2.2, 7.27.2.3, and 7.27.2.4 of this section are violations of this Ordinance, and the city may impose civil penalties and/or seek other remedies, as provided in this Ordinance, to correct violations of those subsections. Subsections 7.27.2.1 and 7.27.2.5 are established by State law, and the violations of these subsections may be punished as provided by State law. No violation of subsections 7.27.2.1 or 7.27.2.5 shall subject the offending party to civil penalties or other remedies established by this Ordinance.

SECTION 7.28 DAYCARE FACILITY, ADULT.

7.28.1. An adult daycare facility must not allow any adult to remain on the premises for more than twenty-four (24) consecutive hours in one (1) stay.

7.28.2. An on-site drop-off and/or residential passenger zone is required.

7.28.3. When located in a residential zoning district, the facility must retain a residential character and must not alter the residential character of the neighborhood.

SECTION 7.29 FLEA MARKETS.

7.29.1. Hours of operation are limited to 8:00 am to 6:30 pm.

7.29.2. The sale of food for consumption on or off the premises will require licensing by the City and approval by the Department of Health.

7.29.3. The sale of firearms and/or alcohol is prohibited.

7.29.4. Permanent open-air flea markets are required to install and maintain fencing or landscaping along three (3) sides of the open market. A landscape plan describing both fencing and landscaping must be reviewed and approved by the UDO Administrator.

SECTION 7.30 MANUFACTURED HOME SALES.

Individual manufactured homes located on a sales lot shall be set back twenty-five (25) feet from the public street right-of-way.

SECTION 7.31 MICROBREWERY/DISTILLERY.

An establishment that meets the definition of a microbrewery or distillery shall be permitted in accordance with Section 6.5, provided it meets the requirements of NCGS 18B-1104 or 18B-1105, respectively. Tasting rooms are an accessory use to a microbrewery.

SECTION 7.32 MIXED USE.

7.32.1. Mixed Use Defined.

The Mixed Use option is provided to allow flexibility in development requirements such as setbacks, density, permitted uses, etc., to accommodate the unique physical, economic, design or other characteristics of a development without compromising the essential standards needed for the protection of the public interest. Mixed Use developments require a conditional use permit, as specified in Section 4.5, in which the primary use of land is a mix of residential and small-scale commercial uses such as retail, office, service and entertainment establishments. A mix of permitted uses is allowed within the same building or on the same lot or as separate uses on

individual parcels. This development pattern is characterized by overlapping patterns of use and activities, and clearly defined, human scale external spaces, where citizens can live, conduct business, and meet freely with others. Development within the mixed use conditional use shall be in accordance with the standards set forth herein.

7.32.2. Performance Standards.

The UDO Administrator, Planning Board, and City Council will work cooperatively with the applicant in determining the appropriate performance standards for Mixed Use developments. The standards of the zoning district, or districts, in which the Mixed Use is located, provide general guidance in determining the standards, with consideration given to the specific characteristics and needs of the individual project. All performance standards including density, parcel dimensional requirements, lighting, landscaping, parking, and signage shall be established by the City Council upon recommendation of the Planning Board through issuance of the conditional use permit. The conditions specified by the conditional use permit shall be compatible with the surrounding area and the objectives of this UDO. Creative design concepts are encouraged to minimize impacts on infrastructure and to support environmental protection. The mixed use shall comply with Article 9, Part IX, Flood Damage Prevention and Article 9, Part V, Subdivision Regulations.

7.32.3. Permitted Uses.

The following uses may be established as permitted uses in a mixed use development. Any use that is not listed in this section is expressively prohibited from being located within a mixed use development.

7.32.3.1. Accessory uses
7.32.3.2. Art galleries
7.32.3.3. Bank/financial services
7.32.3.4. Barber and beauty shops
7.32.3.5. Bookstore, including the retail of stationery, books, magazines, newspapers
7.32.3.6. Clothing store
7.32.3.7. Computer sales and repair
7.32.3.8. Drug store
7.32.3.9. Dwelling, Duplex
7.32.3.10. Dwelling, Multi-Family (greater than one acre)
7.32.3.11. Dwelling, Single-Family
7.32.3.12. Dwelling, Single-Family (as an accessory for a principal business)
7.32.3.13. Fabric store
7.32.3.14. Florist
7.32.3.15. Gifts and souvenirs
7.32.3.16. Government offices

7.32.3.17. Home occupations
7.32.3.18. Ice cream stand or store
7.32.3.19. Jewelry store
7.32.3.20. Dry cleaner, laundromat
7.32.3.21. Libraries, public or private
7.32.3.22. Music instrument sales and service
7.32.3.23. Music studio
7.32.3.24. Nail/tanning salon
7.32.3.25. Office supplies
7.32.3.26. Parks
7.32.3.27. Indoor athletic and exercise facilities
7.32.3.28. Private postal shipping and receiving
7.32.3.29. Offices, professional and services
7.32.3.30. Restaurants, excluding drive-in or drive-through service
7.32.3.31. Retail apparel and accessories
7.32.3.32. Sporting goods store
7.32.3.33. Tailor/dressmaking/seamstress
7.32.3.34. Toy store
7.32.3.35. Travel agencies

7.32.4. Mixed Use Conditional Use Design Standards.
Article 9, Part II, Building Facade Design standards shall apply.

SECTION 7.33 MOTOR VEHICLE, FARM EQUIPMENT, AND BOAT SALES OR RENTAL.

7.33.1. Individual motor vehicles located on a sales lot shall be set back five (5) feet from the public street right-of-way and property lines.

7.33.2. The parking lot of such use shall be improved in accordance with the provisions of Section 9.21, Requirements for Parking Lots.

SECTION 7.34 TATTOO/BODY PIERCING PARLORS.

Tattoo/body piercing parlors may be permitted as a Conditional Use in the B-1,B-2, or SC zoning districts provided that:

7.34.1. The tattoo parlor may not be located or operated within five hundred (500) feet of:

7.34.1.1. A church, synagogue, or regular place of worship;

7.34.1.2. A boundary of any residential district.

7.34.2. For the purposes of this section, 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 tattoo parlor is to be conducted, to the nearest property line of the premises of any use listed in subsection 7.34.1 above.

7.34.3. No more than one (1) tattoo parlor establishment shall be located in the same building or structure or on the same lot. No person shall permit any building, premises, structure, or other facility to contain more than one tattoo parlor.

7.34.4. Tattoo parlors must comply with the following:

7.34.4.1. Hours of operation must be limited to 8:00 AM to 2:00 AM (Monday through 2 AM Sunday). Such establishment shall not be open from 2:01 AM Sunday until 8:00 AM on Monday.

7.34.4.2. Must be fully licensed by the state of North Carolina.

7.34.4.3. Parking lot must be lighted to meet the requirements of Article VIII, Utilities.

SECTION 7.35 VETERINARIAN, ANIMAL CLINIC, OUTSIDE KENNEL.

7.35.1. Outside kennels shall be located only in a side or rear yard.

7.35.2. Outside kennels shall be set back a minimum of fifty (50) feet from an adjoining street right-of-way or property line.

7.35.3. Exterior enclosures and runs must provide protection against weather extremes. Floors of runs must be made of impervious material to permit proper cleaning and disinfecting.

7.35.4. All animal quarters and runs are to be kept in a clean, dry, and sanitary condition.

7.35.5. Fencing surrounding exercise areas and/or runs must be of a sufficient height to prevent escape and must be buried as part of installation to prevent escape by digging beneath the fence posts.

7.35.6. Noise must be mitigated so as not to create a public nuisance for adjoining properties and must comply with all local noise regulations. This excludes typical noise from exercise or training while outdoors during the daytime during hours of operation.

SECTION 7.36 SELF-SERVICE STORAGE FACILITY.

7.36.1. Self-service storage facilities shall be limited to dead storage only.

7.36.2. The sale of any item from or at a self-service storage facility shall be strictly prohibited. It shall be unlawful for any owner, operator or lessee of any self-service storage facility or any portion thereof to offer for sale, or to sell any item of personal activity of any kind whatsoever other than leasing of the storage units.

7.36.3. The vehicle accommodation area of such use shall be improved with either asphalt and concrete.

7.36.4. A driveway aisle for self-service storage shall be a minimum of twenty-four (24) feet. A driveway aisle where access to storage units is only one side of the aisle may be twenty (20) feet in width.

7.36.5. All outdoor lights shall be shielded to direct light and glare only onto the self-service storage premises and may be of sufficient intensity to discourage vandalism and theft. Lighting and glare shall be deflected, shaded, and focused away from all adjoining uses.

7.36.6. No outside storage will be permitted.

SECTION 7.37 BONA FIDE FARMS.

Bona fide farms in the City of Kinston extraterritorial jurisdiction are exempt from the provisions of this Ordinance as directed by NCGS 160A-360(K), as amended by S.L. 2011-363(H168).

SECTION 7.38 SOLAR ENERGY GENERATING FACILITY, ACCESSORY.

Solar collectors shall be permitted as an accessory use to new or existing structures or facilities in accordance with Section 6.5, subject to the following standards:

7.38.1. Roof-Mounted Solar Systems.

The collector surface and mounting devices for roof-mounted solar systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built.

7.38.1.1. Pitched Roof Mounted Solar Systems. For all roof-mounted systems other than a flat roof, a drawing shall be submitted showing the location of the solar panels.

7.38.1.2. Flat Roof Mounted Solar Systems. For flat roof applications, a drawing shall be submitted showing the distance to the roof edge and any parapets on the building.

7.38.2. Ground-Mounted Solar Systems.

Ground-mounted solar collectors (accessory) shall meet the minimum zoning setback for the zoning district in which it is located, except that it may be located within the front yard setback in the RA-20, O-I, B-2, I-B, I-1, and I-2 zoning districts when the system does not exceed six (6) feet in height and screening shall be required consistent with Article 9, Part I.

7.38.3. Approved Solar Components.

Electric solar system components shall have a UL listing.

7.38.4. Compliance with Building and Electrical Codes.

All solar collector systems shall be in conformance with the International Building Code with North Carolina amendments.

7.38.5. Compliance with Other Regulations.

All solar collector systems shall comply with all other applicable regulations.

SECTION 7.39 SOLAR FARM (MAJOR ENERGY).

A Solar Farm developed as a principal use shall be permitted in accordance with Section 6.5, subject to the following:

7.39.1. Setbacks.

Solar farms shall meet the minimum zoning setbacks for the zoning district in which located.

7.39.2. Height.

Fifteen (15) feet maximum.

7.39.3. Visibility.

Solar farms must be set back at least 150 feet from any residential district; no energy generating equipment may be located within 150 feet of any public right-of-way; and a continuous screen of evergreen vegetation intended to be at least ten (10) feet high and three (3) feet thick at maturity must screen all adjacent properties and roadways.

7.39.4. Interconnection Agreement.

All solar farms are required to enter into an interconnection agreement with the City prior to connection.

7.39.5. Application Requirements.

7.39.5.1. Submit a site plan denoting the dimensions of the parcel, proposed solar farm location (arrangement of panels), distance from the proposed area to all property lines, and location of the driveway(s). No portion of the system area may encroach into the required setbacks and any buffer area(s).

7.39.5.2. The site plan should also show the location of required buffers.

7.39.5.3. Submit horizontal and vertical (elevation) to-scale drawings with dimensions. The drawings must show the location of the system on the property.

7.39.5.4. State and Local Stormwater permits may be required based upon ground cover.

7.39.5.5. If applicable, the applicant must apply and receive from the North Carolina Department of Transportation (NCDOT) a driveway permit, or submit documentation from NCDOT that the existing site access is acceptable for the required use prior to final project approval.

7.39.6. Installation and Design.

7.39.6.1. Approved Solar Components - Electric solar energy system components must have a UL listing and must be designed with anti-reflective coating(s).

7.39.6.2. Compliance with Building and Electrical Code - All solar farms shall meet all requirements of the International Building Code with North Carolina Amendments.

SECTION 7.40 TEMPORARY USES.

7.40.1. A zoning permit may be authorized by the UDO Administrator for Christmas tree and related natural ornamental sales, itinerant merchant sales, retail merchant shows, and similar temporary uses.

7.40.2. All other temporary uses of land must be approved as special events in accordance with Section 7.8.

7.40.3. A zoning permit for a temporary use may also authorize one (1) temporary sign, not to exceed forty (40) square feet in sign surface area, associated with the temporary use. Such temporary sign shall conform to the requirements of Article 9, Part IV.

SECTION 7.41 WIND ENERGY GENERATING FACILITY, ACCESSORY.

Wind energy generating facilities (accessory) designed to supplement other electricity sources shall be permitted as an accessory use in accordance with Section 6.5, subject to the following standards:

7.41.1. A wind energy generator (accessory) shall be setback from all property lines a distance equal to one linear foot for every foot of height of the highest structure that is part of the facility or the minimum setback for the zoning district, whichever is greater.

7.41.2. A wind turbine may not be located between the front wall of the primary structure and the street.

7.41.3. Rotor blades on wind turbines shall maintain at least twenty-four (24) feet of clearance between their lowest point and the ground.

7.41.4. Maximum height of wind turbines shall be consistent with the requirements of the underlying zoning district. The height shall be measured from the ground to the highest point of the prop.

7.41.5. Installation and Design.

> ***7.41.5.1.*** The installation and design of the wind energy generator (accessory) shall conform to applicable industry standards, including those of the American National Standards Institute.

7.41.5.2. All electrical, mechanical, and building components of the wind energy generator (accessory) shall be in conformance with the International Building Code with North Carolina amendments.

7.41.5.3. Any on-site transmission or power lines shall, to the maximum extent possible, be installed underground.

7.41.5.4. Attachment to a building of any kind shall be prohibited.

7.41.6. The visual appearance of wind energy generator (accessory) shall:

7.41.6.1. Be constructed of a corrosion resistant material that will not fade, show rust spots, or otherwise change the appearance as a result of exposure to the elements and be a non-obtrusive color such as white, off-white, or gray.

7.41.6.2. Not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.

7.41.6.3. Landscaping, buffering, and screening shall be provided in accordance with Article 9, Part I.

7.41.7. Any wind energy generator (accessory) that is not functional shall be repaired by the owner within a three (3) month period or be removed. In the event that the City becomes aware of any wind energy system that is not operated for a continuous period of three (3) months, the City will notify the landowner by certified mail and provide thirty (30) days for a written response. In such a response, the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If the City deems the timetable for corrective action as unreasonable, the City shall notify the landowner and such landowner shall remove the turbine within thirty (30) days of receipt of said notice. Any disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

7.41.8. Compliance with Other Regulations. All wind energy generators shall comply with all other applicable regulations.

SECTION 7.42 WIND FARM.

Wind Farms developed as a principal use shall be permitted in accordance with Section 6.5, subject to the following:

7.42.1. Setbacks.

Wind Energy Facility Type	Minimum Lot Size	Minimum Setback Requirements[1]				
		Occupied Buildings (Subject Property)[2]	Property Lines[2]	Public/ Private Right-of-Way[2]	Highway Corridor Overlay District	Maximum Height from Grade
Wind Farm	5 Acres	1.0	1.0	1.5	2.5	250 Ft.

[1] Measured from the center of the wind turbine base to the property line, right-of-way, or nearest point on the foundation of the occupied building. [2] Calculated by multiplying required setback number by wind turbine height.

7.42.2. Height.

Two hundred fifty feet (250') maximum.

7.42.3. Ground Clearance.

Rotor blades on wind turbines must maintain at least twenty-four feet (24') of clearance between their lowest point and the ground.

7.42.4. Visibility.

Wind farms must be set back at least 150 feet from any residential district; no energy generating equipment may be located within 150 feet of any public right-of-way; and a continuous screen of evergreen vegetation intended to be at least ten (10) feet high and three (3) feet thick at maturity must screen all adjacent properties and roadways.

7.42.5. Interconnection Agreement.

All wind farms are required to enter into an interconnection agreement with the City prior to connection.

7.42.6. Wind Farm Facility Noise, Shadow Flicker, and Electromagnetic Interference.

7.42.6.1. Audible sound from a Wind Turbine shall not exceed fifty-five (55) dBA, as measured at any occupied building of a Non-Participating Landowner.

7.42.6.2. Shadow flicker at any occupied building on a Non-Participating Landowner's property caused by a Wind Energy Facility located within 2,500 feet of the occupied building shall not exceed thirty (30) hours per year.

7.42.6.3. Wind turbines may not interfere with normal radio and television reception in the vicinity. The applicant shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any wind energy facility.

7.42.7. Application Requirements.

7.42.7.1. Provide identification and location of the property on which the proposed wind farm will be located.

7.42.7.2. Submit a site plan denoting the dimensions of the parcel, proposed wind farm location (arrangement of turbines and related equipment), distance from the proposed area to all property lines, and location of the driveway(s). No portion of the wind farm area may encroach into the required setbacks and any buffer area(s).

7.42.7.3. The site plan should also show the location of required buffers.

7.42.7.4. Provide the representative type and height of the wind turbine in the form of horizontal and vertical (elevation) to-scale drawings, including its generating capacity, dimensions and respective manufacturer, and a description of ancillary facilities.

7.42.7.5. Provide evidence of compliance with applicable Federal Aviation Administration regulations.

7.42.7.6. State and Local Stormwater permits may be required based upon ground cover.

7.42.7.7. If applicable, the applicant must apply and receive from the North Carolina Department of Transportation (NCDOT) a driveway permit, or submit documentation from NCDOT that the existing site access is acceptable for the required use prior to final project approval.

7.42.7.8. An applicant for a Wind Farm conditional use permit shall include with the application an analysis of the potential impacts of the wind power project, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, in the following areas:

7.42.7.8.1. Demographics including people, homes, and businesses.
7.42.7.8.2. Noise.
7.42.7.8.3. Visual impacts.
7.42.7.8.4. Public services and infrastructure.
7.42.7.8.5. Cultural and archaeological impacts.
7.42.7.8.6. Recreational resources.
7.42.7.8.7. Public health and safety, including air traffic, electromagnetic fields, and security and traffic.
7.42.7.8.8. Hazardous materials.
7.42.7.8.9. Land-based economics, including agriculture, forestry, and mining.
7.42.7.8.10. Tourism and community benefits.
7.42.7.8.11. Topography.
7.42.7.8.12. Soils.
7.42.7.8.13. Geologic and groundwater resources.
7.42.7.8.14. Surface water and floodplain resources.
7.42.7.8.15. Wetlands.
7.42.7.8.16. Vegetation.
7.42.7.8.17. Avian impact assessment that includes an indication of the type and number of birds that are known or suspected to use a project site and the area surrounding that site.
7.42.7.8.18. Wildlife.
7.42.7.8.19. Rare and unique natural resources.

7.42.7.9. An applicant for Wind Farm conditional use permit shall state in the application whether a Certificate of Public Convenience and Necessity for the system is required from the North Carolina Utilities Commission and, if so, the anticipated schedule for obtaining the certificate. The city may ask the Utilities Commission to determine whether a Certificate of Public Convenience and Necessity is required for a particular wind power project for which the city has received an application. The city shall not approve a project requiring a certificate unless and until such certificate is issued by the Utilities Commission. If a certificate is not required from the Utilities Commission, the permit shall include with the application a discussion of what the applicant intends to do with the power that is generated.

7.42.8. Installation and Design.

7.42.8.1. The installation and design of the wind generation facility shall conform to applicable industry standards, including those of the American National Standards Institute.

7.42.8.2. All electrical, mechanical, and building components of the wind generation facility shall be in conformance with the International Building Code with North Carolina Amendments.

7.42.8.3. Any on-site collection and distribution lines shall, to the maximum extent possible, be installed underground.

7.42.8.4. Attachment to a building of any kind shall be prohibited.

7.42.9. Visual Appearance.

7.42.9.1. The wind turbine shall be constructed of a corrosion resistant material that will not fade, show rust spots or otherwise change the appearance as a result of exposure to the elements, and be a non-obtrusive color such as white, off-white or gray; and

7.42.9.2. The wind turbine shall not be artificially lit, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.

7.42.10. Maintenance.

Any wind generation facility that is not functional shall be repaired by the owner within a 6-month period or be removed. In the event that the city becomes aware of any wind farm that is not operated for a continuous period of 6 months, the city will notify the landowner by certified mail and provide 30 days for a written response. In such a response, the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If the city deems the timetable for corrective action as unreasonable, the city shall notify the landowner, and such landowner shall remove the turbine(s) with 180 days of receipt of said notice. Any disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

7.42.11. Decommissioning.

7.42.11.1. The applicant must remove the wind generation facility if, after the completion of the construction, the wind generation facility fails to begin operation, or becomes inoperable for a continuous period of one (1) year.

7.42.11.2. The one-year period may be extended upon a showing of good cause to the City of Kinston Board of Adjustment.

7.42.11.3. Applicants proposing development of a Wind Farm must provide to the city a form of surety equal to 125% of the entire cost, as estimated by the applicant and approved by the City Attorney, either through a surety performance bond, irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the city or in escrow with a financial institution designated as an official depository of the city, to cover the cost of removal in the event the applicant is unable to perform any required removal and the city chooses to do so. Following initial submittal of the surety, the cost calculation shall be reviewed every 12 months by the applicant and adjusted accordingly based upon the estimated decommissioning costs in current dollars. The adjustment must be approved by the city. Failure to comply with any requirement of this paragraph shall result in the immediate termination and revocation of all prior approvals and permits; further, the City of Kinston shall be entitled to make immediate demand upon, and/or retain any proceeds of, the surety, which shall be used for decommissioning and/or removal of the Wind Farm, even if still operational.

SECTION 7.43 HOME OCCUPATIONS IN THE ARTS AND CULTURAL OVERLAY DISTRICT.

Home occupations in the arts and cultural overlay district shall be an enterprise that is primarily music or arts-based, involving the creation, display, or sale of artistic wares, crafts, pieces, sculptures, or other creations during normal business hours and weekends. A café not exceeding 1,000 square feet may also be permitted. Signs in the arts and cultural overlay are limited to wall signs no larger than eight (8) square feet, except for sandwich board signs in accordance with Section 9.31.1.6. Signs shall not be illuminated.

SECTION 7.44 DWELLING, OVER A BUSINESS.

Following the date of adoption of this Ordinance, multi- and single-family residential will be permitted in the B-2 district when limited to the following conditions:

7.44.1. Minimum non-ground level building floor area of 600 square feet per residential unit.

7.44.2. Street frontage use requirements: All ground floor space shall be developed for nonresidential uses, as permitted in the B-2 district.

7.44.3. Parking: Off-street parking is not required.

SECTION 7.45 FOOD TRUCKS.

Food trucks shall be permitted in accordance with the Table of Uses and Activities, subject to the following standards:

7.45.1. Exceptions to the Process.

7.45.1.1. Food trucks may conduct sales while parked on a public street when the City Council has approved a temporary street closing for a City-sponsored or civic event such as a street festival/fair.

7.45.1.2. Food trucks may operate on a private property for a maximum of twenty (20) days, three individual weekend events, or both each calendar year when utilizing a temporary event permit.

7.45.2. Food Truck Location.

Food trucks must be located at least 100 feet from the front door of any restaurant and outdoor dining area and at least 50 feet from any permitted mobile food vending cart location. Additionally, food trucks must be parked at least 15 feet from any fire hydrant, and 5 feet away from any driveway, sidewalk, utility box or vault, handicapped ramp, building entrance or exit, or emergency call box. These minimum distance requirements are all measured in a straight line from the closest point of the proposed food truck location to the closest point from the buffered point, or in the case of a restaurant measured from the closest point of the restaurants main entrance. If a zoning permit is issued and a restaurant subsequently opens within 100 feet (measured from the restaurants main entrance) of the approved food truck location, the food truck may continue to operate until the permit expires.

7.45.3. Zoning Permit.

The zoning permit must be signed by the property owner, and completed and submitted along with a site plan or plot plan. If a property owner has a property large enough to accommodate more than one food truck, only one zoning permit is required to be submitted showing the location of all food trucks. The plot plan must show the limits of the property, the location(s) of the proposed food truck, and label adjoining uses on neighboring properties. The applicant must also submit a NC Department of Agriculture Permit and a copy of the vehicle or trailer registration.

7.45.4. Parking.

Food trucks may not occupy any required parking stall for the primary use while the primary use is open to the public. Food trucks and the primary use may share parking spaces when having separate hours of operation. Parking stalls that are overflow or extra according to the regulations

in the UDO may be used to park a food truck; however, parking stalls leased to another business or adjacent use may not be used unless the food truck is operating under separate hours of operation. Food trucks may not park in handicapped accessible parking spaces, nor can they park in access or drive aisles. The approved location for the parking trucks, as shown on the zoning permit, must be physically marked. The food truck parking space can be marked with paint, tape or other easily identifiable material. Public parking spaces may be utilized with a zoning permit for not longer than a 24-hour period of time if the food truck location does not disrupt normal traffic flow or create any other hazards. Food trucks may not be parked in an approved location after hours of operation.

7.45.5. Hours of Operation.

Food trucks may operate between the hours of 6 a.m. and 3 a.m., unless the food truck is located within 150 feet of a property with a single- or two-family residential dwelling. When located within 150 feet of this residential dwelling, the hours of operation shall be between 7 a.m. and 10 p.m. This measurement is taken from the property line of the residential dwelling in a straight line to the closest point of the approved food truck location.

7.45.6. Prohibitions.

Food trucks may not use audio amplification or freestanding signage. All equipment associated with the food trucks must be located within three (3) feet of the food truck. The food truck operator is responsible for disposing of all trash associated with the operation of the food truck. City trash receptacles may not be used to dispose trash or waste. All areas within five (5) feet of the food truck must be kept clean. Grease and liquid waste may not be disposed in tree pits, storm drains, the sanitary sewer system or public streets. Food trucks are all subject to the city-wide noise ordinance.

7.45.7. Maximum Number of Trucks Per Property.

7.45.6.1. Maximum of two (2) food trucks on lots of one-half acres or less.

7.45.6.2. Maximum of three (3) food trucks on lots between one-half acre and 1 acre.

7.45.6.3. Maximum of four (4) food trucks on lots greater than 1 acre.

7.45.6.4. Outdoor seating associated with a food truck is only permitted on lots at least two acres in size or greater.

SECTION 7.46 GRANNY PODS.

Granny pods shall be permitted as an accessory use in accordance with the Table of Uses and Activities, subject to the following standards:

7.46.1. Structures must be transportable residential units assembled off-site and built to the standards of the State Building Code. It must be no more than 300 gross square feet and must not be placed on a permanent foundation.

7.46.2. The accessory structure must comply with all setbacks and any maximum floor area ratio limits that apply to the primary residential structure. The structure shall be connected to any public water, sewer, and electric utilities serving the property or water and/or sewer systems approved by the City of Kinston. Only one accessory temporary family care structure is allowed per lot. No signage regarding the presence of the structure is allowed. The structure must be removed within sixty (60) days after care-giving on the site ceases.

7.46.3. A zoning permit is required to be obtained prior to installation. Evidence of compliance may be required as part of the permitting and annual permit renewal, including an annual renewal of the doctor's certification of impairment. The city may make periodic inspections at times convenient to the caregiver to assure on-going compliance.

7.46.4. The caregiver must be at least 18 years old and must be a first or second degree relative of the impaired person (a spouse, parent, grandparent, child, grandchild, aunt, uncle, nephew, or niece). A legal guardian of the impaired person also qualifies.

7.46.5. In the O&I district, granny pods shall only be permitted for single-family residentially used property.

SECTION 7.47 TINY HOUSES.

Tiny houses shall be allowed in accordance with the Table of Uses and Activities, subject to the following:

7.47.1. A tiny house must comply with the North Carolina State Building Code.

7.47.2. A tiny house must be situated on a permanent foundation with secure wind-resistant tie-downs and connected to public water, sewer, and electric utilities.

7.47.3. If the tiny house is constructed on a travel chassis with wheels, the wheels must be removed for permanent location on a foundation.

7.47.4. A tiny house must comply with all UDO requirements for the zoning district in which it is located.

7.47.5. Room Unit Capacity. The amount of floor space provided per room or occupant shall be that provided in the applicable North Carolina building code.

SECTION 7.48 TIRE SALES (OPEN STORAGE ALLOWED).

Tire sales (open storage allowed) shall be permitted in accordance with the Table of Uses and Activities, subject to the following:

7.48.1. All outside storage must be located in the rear yard.

7.48.2. Outside storage must be five (5) feet from any property line.

7.48.3. All outside storage must be enclosed by an opaque fence at least six (6) feet in height.

7.48.4. All storage areas shall be properly drained and free of standing water.

SECTION 7.49 RESTAURANTS IN THE B-2 DISTRICT.

An approved outdoor dining/alcohol service permit is required as part of the zoning approval process for any outside seating at restaurants located in the B-2 district.

SECTION 7.50 INTERNET SWEEPSTAKES OPERATION.

7.50.1. An internet sweepstakes shall be defined as where persons utilize computers, gaming terminals, or other electronic machines, whether connected to the internet or not, to conduct games of skill or chance oriented toward adult audiences, including sweepstakes, and where cash, merchandise or other items of value are earned, redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. This does not include any lottery approved by the State of North Carolina.

7.50.2. Internet sweepstakes machines shall be limited to two (2) machines per premises;

7.50.3. Internet sweepstakes shall not be permitted in any of the following locations:

7.50.3.1. On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet of any zoning district within which residential uses are permitted;

7.50.3.2 On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from a building used as a dwelling;

7.50.3.3. On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from a building in which an internet sweepstakes operation is located;

7.50.3.4 On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from a building used as a church, synagogue, or other house of worship.

7.50.3.5 On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from a building used as a public school or as a state licensed day care center;

7.50.3.6 On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from any lot or parcel on which a restaurant is located; and

7.50.3.7 On any lot or parcel, any portion of which lies within one thousand five hundred (1,500) feet in any direction from any lot or parcel on which a cemetery, public playground, public swimming pool, or public park is located.

7*.50.4* Internet sweepstakes shall not be permitted as an accessory use.

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ARTICLE 8. NONCONFORMING SITUATIONS

SECTION 8.1 INTENT.

Upon the effective date of this Ordinance, and any amendment thereto, preexisting structures or lots of record and existing and lawful uses of any building or land which do not meet the minimum requirements of this Ordinance for the district in which they are located or which would be prohibited as new development in the district in which they are located shall be considered as nonconforming. It is the intent of this article to permit these nonconforming uses to continue until they are removed, discontinued, or destroyed, but not to encourage such continued use, and to prohibit the expansion of any nonconformance.

SECTION 8.2 NONCONFORMING USES. (Amended 11/20/2017)

A nonconforming use is a use of land, buildings, or structures that was lawfully established prior to the effective date of this Ordinance, or any amendment thereto, but which does not conform to the regulations for the zoning classification in which it is located. Nonconforming uses may be continued subject to the limitations noted herein. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building or one space in a nonconforming manufactured home park for ninety (90) days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or manufactured home park as a whole is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

8.2.1. Expansions.

No nonconforming use shall be extended, expanded, enlarged, or moved to occupy a different or greater area of land, buildings, or structures than was occupied by such use at the time it became nonconforming; provided, however, a nonconforming use may be extended throughout any parts of a building which were specifically designed and arranged for such use at the time it became nonconforming.

8.2.2. No building or structure devoted to a nonconforming use shall be enlarged, extended, reconstructed, moved, or structurally altered unless such building or structure is thereafter devoted to a conforming use; provided, however, such building or structure may be enlarged or extended upon prior authorization from the Board of Adjustment, which authorization shall not be granted unless the Board of Adjustment makes each of the following findings of fact:

> ***8.2.2.1.*** The proposed enlargement or extension shall be minor or insignificant in relation to the existing building or structure.

8.2.2.2. The proposed enlargement or extension shall not increase the intensity of the nonconforming use, which is to say, it will not result in an increase in dwelling units for a residential use nor in gross floor area for a nonresidential use.

8.2.2.3. The proposed enlargement or extension is designed so that it will not render the use of the property any less compatible than it is in its existing circumstances.

8.2.2.4. The authorization of such proposed enlargement or extension is not otherwise contrary to the public health, safety, or welfare.

8.2.3. A nonconforming use of a structure may not be changed to another nonconforming use unless such change is authorized by the Board of Adjustment. In order to authorize a change in nonconforming use, the Board of Adjustment shall consider the relative impacts of the existing nonconforming use and the proposed nonconforming use with regard to traffic, noise, pollution, visual appearance and compatibility with the neighborhood, and shall make each of the following findings:

8.2.3.1. The proposed use is expected to result in impacts which are less than those associated with the existing use.

8.2.3.2. The proposed use will be more compatible with the surrounding neighborhood than is the existing use.

8.2.3.3. Approval of the change in nonconforming use serves the public health, safety, and general welfare.

8.2.3.4. Failure to approve the change in nonconforming use would result in a hardship to the owner of the property on which the nonconforming use is situated.

An existing nonconforming use shall be discontinued within sixty (60) days of the date of approval of a change in nonconforming use. Subsequent to that time, such existing use shall become unlawful.

8.2.4. Where a nonconforming use ceases for ninety (90) consecutive days, then the use shall not be re-established or resumed, and any subsequent use of the land or structure shall conform to the requirements of this Ordinance. Vacancy and non-use of the building or structure, regardless of the intent of the owner, shall constitute discontinuance under this provision.

8.2.5. Where a building or structure devoted to a nonconforming use is damaged to the extent of fifty percent (50%) or more of its current value, such building or structure, if restored, shall thereafter be devoted to conforming uses. For nonconforming signs, refer to Section 8.7.5.

SECTION 8.3 NONCONFORMING STRUCTURES.

A nonconforming structure is a building or other structure which lawfully existed prior to the effective date of this Ordinance, or an amendment thereto, and which no longer could be built under the terms of this Ordinance, as amended, by reason of restrictions on area, footprint, open space, building height, setbacks, lot width, or other requirements concerning the structure.

8.3.1. A nonconforming structure devoted to a use permitted in the zoning classification in which it is located may continue to be used only in accordance with the provisions of this section.

8.3.2. Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.

8.3.3. Except as provided in Sections 8.3.4 and 8.3.5, below, a nonconforming structure shall not undergo a change of use, renovation, or expansion.

8.3.4. A nonconforming structure may undergo a change or use or renovation without having to bring the structure into conformity with the requirements of these regulations, provided that:

> ***8.3.4.1.*** The change in use or renovation does not increase the floor area of the structure.
>
> ***8.3.4.2.*** The change in use is to a permitted use within the district.
>
> ***8.3.4.3.*** The number of parking spaces provided for the use is in conformity with the requirements of these regulations.

8.3.5. A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are both brought into conformity with the requirements of this Ordinance.

8.3.6. A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning classification in which it is located.

8.3.7. Where a nonconforming structure is damaged by fire, flood, wind, or other act of God, and such damage does not exceed fifty percent (50%) of the current assessed taxable value of the structure, it may be restored to its original dimensions and conditions as long as a building permit for the restoration is issued within twelve months of the date of the damage.

SECTION 8.4 NONCONFORMING LOTS OF RECORD.

Any lot of record of structure existing at the time of the adoption of this Ordinance, which has dimensions which do not meet the requirements of this Ordinance, shall be subject to the following exceptions and modifications:

8.4.1. Adjoining Lots.

When two or more adjoining lots with continuous frontage are in one ownership at any time after the adoption of this Ordinance, and such lots individually are less than the minimum square footage and/or have less than the minimum width required in the district in which they are located, such group of lots shall be considered as a single lot or several lots of minimum permitted area and width for the district in which they are located.

8.4.2. Lot Not Meeting Minimum Lot Size Requirements.

Except as set forth in the above, in any district in which single-family dwellings are permitted, any lot of record existing at the time of the adoption of these regulations that has dimensions that are less than required by these regulations may be used as a building site for a single-family dwelling providing the lot area and width are not less than eighty percent (80%) of the requirements in the district. If the lot is smaller or narrower, a variance may be requested of the Board of Adjustment.

8.4.3. Yard Requirements Modified.

Except as set forth in Section 8.4.1, above, where a lot has width or depth less than that required in the district in which it is located, the UDO Administrator shall be authorized to reduce the yard requirements for such lot by not more than twenty percent (20%). Additional or other forms of yard modification may be permitted with a variance granted by the Board of Adjustment.

8.4.4. Enlargement of Nonconforming Structures.

Any building which is nonconforming solely because of its encroachment in a required yard area may be extended in any lawful manner that does not further encroach in that yard.

SECTION 8.5 REPAIRS AND MAINTENANCE.

Minor repairs to and routine maintenance of land, buildings, structures, or other development of land devoted to a nonconforming use or having nonconforming structures are permitted, provided the cost of such repairs and maintenance within any twelve (12) month period does not exceed ten percent (10%) of the current assessed taxable value of the land, buildings, structure, or other development of land. Any structure or other development of land devoted to a nonconforming use that is declared unsafe by the UDO Administrator because of lack of repairs and maintenance shall not be restored, repaired, reconstructed, or used except in conformity with the provisions of this

article. Any structure or other development of land devoted to a nonconforming use that is declared unsafe by the UDO Administrator, but not because of lack of repairs and maintenance, may be repaired and restored subject to the requirements of this article.

SECTION 8.6 COMPLETION OF NONCONFORMING PROJECTS.

All nonconforming projects on which construction was begun at least one hundred eighty (180) days before the effective date of this Ordinance as well as all nonconforming projects that are at least ten (10) percent completed in terms of the total expected cost of the project on the effective date of this Ordinance may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this subsection shall apply only to the particular phase under construction. In addition, as provided in GS 160A-385(b), neither this Ordinance nor any amendment to it shall, without the consent of the property owner, affect any lot with respect to which a building permit has been issued pursuant to GS 160A-417 prior to the enactment of the Ordinance making the change so long as the building permit remains valid, unexpired, and unrevoked.

SECTION 8.7 NONCONFORMING SIGNS.

Signs in existence on the effective date of this Ordinance which do not conform to the provisions of this Ordinance but which were constructed, erected, affixed, or maintained in compliance with all previous regulations shall be regarded as nonconforming signs. Although it is not the intent of the Ordinance to encourage the continued use of nonconforming signs, nonconforming signs shall be allowed to continue and a decision as to the continued existence and use or removal of such signs shall be controlled as follows:

8.7.1. No nonconforming sign shall be changed to another nonconforming sign.

8.7.2. No nonconforming sign shall have any changes made in the words or symbols used or the message displayed on the sign unless the sign is specifically designed for periodic change of message.

8.7.3. No nonconforming sign shall be structurally altered so as to change the shape, size, type, or design of the sign other than to make the sign conforming.

8.7.4. No nonconforming sign shall be re-established after the activity, business or use to which it relates has been discontinued and such sign shall be removed.

8.7.5. No nonconforming sign shall be re-established, and all remains of the sign must be removed after damage or destruction, if the estimated expense of repairs exceed fifty (50) percent of the estimated total cost of the sign at the time of destruction. If damaged by less than fifty (50) percent, but repairs are not made within three (3) months of the time such damage occurred, the nonconforming sign shall not be allowed to continue and must be removed.

8.7.6. No nonconforming sign shall be relocated.

8.7.7. Normal maintenance and repair of a nonconforming sign is permitted providing the shape, size, type, or design of the sign is not altered.

Signs located on premises which come within the zoning jurisdiction of the City of Kinston after the effective date of this Ordinance and which signs do not comply with the provisions of this Ordinance shall be subject to the requirements listed above. Any nonconforming sign which is structurally altered, relocated, or replaced shall immediately be brought into compliance with all the provisions of this Ordinance.

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ARTICLE 9.
PERFORMANCE STANDARDS

PART I. OFF-STREET PARKING AND OFF-STREET LOADING REQUIREMENTS

SECTION 9.1 OFF-STREET PARKING REQUIREMENTS.

There shall be provided at the time of the erection of any building, or at the time any principal building is enlarged or increased in capacity by adding dwelling units, guest rooms, seats, or floor area, permanent off-street parking space in the amount specified by this section. Such parking space may be provided in a parking garage or properly graded open space that complies with the standards for parking established in this section.

9.1.1. Certification of Minimum Parking Requirements.

Each application for a certificate of zoning compliance submitted to the UDO Administrator as provided for in Section 5.3.7 of this Ordinance shall include information as to the location and dimensions of off-street parking and the means of entrance and exit to the space. This information shall be in sufficient detail to enable the UDO Administrator to determine whether or not the requirements of this section are met.

9.1.2. Joint Use of Required Parking Spaces.

9.1.2.1. One parking area may contain required spaces for several different uses, but except as otherwise provided in this section, the required space assigned to one use may not be credited to any other use.

9.1.2.2. To the extent that developments that wish to make joint use of the same parking spaces operate at different times, the same spaces may be credited to both uses. For example, if a parking lot is used in connection with an office building on Monday through Friday but is generally ninety (90) percent vacant on weekends, another development that operates only on weekends could be credited with ninety (90) percent of the spaces on that lot. Or, if a church parking lot is generally occupied only to fifty (50) percent of capacity on days other than Sunday, another development could make use of fifty (50) percent of the church lot's spaces on those other days.

9.1.2.3. If the joint use of the same parking spaces by two (2) or more principal uses involves satellite parking spaces, then the provisions of Section 9.20.3 are also applicable.

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SECTION 9.2 GENERAL PROVISIONS.

9.2.1. Mixed Use.

In the case of mixed use developments, the total required off-street parking or loading space shall be the sum of the requirements for the various uses computed separately except for as provided below.

9.2.1.1. Up to one-half of the parking spaces required for one use in a mixed use development may be used to satisfy the parking requirements for a second use within the proposed development, subject to certification by the UDO Administrator that such joint usage parking complies with the following provisions:

9.2.1.1.1. The peak usage of the parking facility by one use will be at night or on Sundays and the peak usage of the parking facility by the second use will be at other times as provided in Section 9.19.2.

9.2.1.1.2. The other uses are ancillary to the primary use, such as restaurants and meeting rooms included in hotels and motels.

9.2.1.2. Minimum parking requirements for a mixed use development may be reduced by the UDO Administrator if a traffic/parking study is submitted to demonstrate and the UDO Administrator finds that:

9.2.1.2.1. Sidewalks, bicycle facilities, transit service, and transit amenities are in place such that together with the number of parking spaces that are proposed, transportation is adequately served. Parking spaces required by this section may be placed within any public or private street right-of-way in accordance with the approved conditional use permit, if there is sufficient on-street public parking available within a 400-foot radius of the mixed-use development to meet the requirement for the mixed-use development.

9.2.1.2.2. Reduction of the minimum parking requirements will not be injurious to the general health, safety, and welfare.

9.2.2. Phased Developments.

Each individual phase of a multi-phase development shall meet all applicable parking standards established in this section including shared parking facilities prior to initiation of the next phase.

9.2.3. Satellite Parking.

9.2.3.1. If the number of off-street parking spaces required by this article cannot reasonably be provided on the same lot where the principal use associated with these parking spaces is located, then spaces may be provided on adjacent or nearby lots in accordance with the provisions of this section. These off-site spaces are referred to in this section as ■satellite• parking spaces.

9.2.3.2. All such satellite parking spaces (except spaces intended for employee use) must be located within six hundred (600) feet of a public entrance of a principal building housing the use associated with such parking or within six hundred (600) feet of the lot on which the use associated with such parking is located if the use is not housed within any principal building. Satellite parking spaces intended for employee use may be located within any reasonable distance. Satellite parking spaces must be located in a zoning district which permits parking lots for the use intended.

9.2.3.3. The developer wishing to take advantage of the provisions of this section must present satisfactory written evidence, to be reviewed by the City Attorney, that he has the permission of the owner or other person in charge of the satellite parking spaces to use such spaces. Access to principal site from satellite parking shall be via public streets or sidewalks, otherwise a private access easement must be mapped and recorded at the register of deeds if necessary to cross intermediate property. The developer must also sign an acknowledgment that the continuing validity of his permit depends upon his continuing ability to provide the requisite number of parking spaces. The satellite parking agreement must be recorded at the register of deeds and a copy must be provided to the planning department, prior to issuance of zoning permit.

9.2.3.4. Persons who obtain satellite parking spaces in accordance with this section shall not be held accountable for ensuring that the satellite parking areas from which they obtain their spaces satisfy the design requirements of this article.

9.2.3.5. Notwithstanding any other provisions of this article, whenever (1) there exists a lot with one or more structures on it constructed before the effective date of this Ordinance, and (2) a change in use that does not involve any enlargement of a structure is proposed for such lot, and (3) the parking requirements of Section 9.28 that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking, then the developer need only comply with the requirements of Section 9.28 to the extent that (1) parking space is

practicably available on the lot where the development is located and (2) satellite parking space is reasonably available as provided in Section 9.20.3. However, if satellite parking subsequently becomes reasonably available, then it shall be a continuing condition of the permit authorizing development on such lot that the developer obtain satellite parking when it does become available.

9.2.4. Maneuvering Room.

Maneuvering space for off-street parking shall be located on the lot upon which parking is provided and not on public right-of-way.

9.2.5. Parking Space Requirements.

9.2.5.1. The parking surface on all on-site and off-site parking lot(s), with the exception of detached single-family or duplex housing units, shall be dust free, all weather material (i.e., concrete, asphalt, paving stones) or permeable all weather surfacing. The paving surface shall be marked with the necessary striping delineating the parking stalls and locations of handicapped parking spaces.

9.2.5.2. Residential parking areas or driveways shall be properly delineated and surfaced with concrete, asphalt, coquina, or permeable material.

9.2.6. Entrances to Streets.

9.2.6.1. Access to public thoroughfares shall be from a driveway and not directly from a parking space.

9.2.6.2. All driveway entrances and other openings onto streets within the city's planning jurisdiction shall be constructed so that:

9.2.6.2.1. Vehicles can enter and exit from the lot in question without posing any substantial danger to themselves, pedestrians, or vehicles travelling in abutting streets; and

9.2.6.2.2. Interference with the free and convenient flow of traffic in abutting or surrounding streets is minimized.

9.2.6.3. Within the corporate limits of the City of Kinston, a driveway permit, issued by the city engineer, is required prior to the installation of a driveway. All such driveways must conform to the city's specification for driveways.

9.2.7. Extension of Parking Space into a Residential District.

Necessary customer and employee parking space may extend up to one hundred twenty (120) feet into a residential district, provided that the parking space:

9.2.7.1. Adjoins a residential district;

9.2.7.2. Has its only access to the property from upon the same street or alley as the property in the nonresidential district for which it provides the required parking space and has no access from any point within the residential district; and

9.2.7.3. Is separated from abutting properties or streets in the residential district by a planted buffer strip and fence or barrier to prevent through traffic or access beyond the buffer.

9.2.8. Deviations.

9.2.8.1. The UDO Administrator may allow deviations from the parking requirements set forth in Section 9.28 when he/she finds that:

9.2.8.1.1. A residential development is irrevocably oriented toward the elderly, disabled, or other populations that demonstrate a lesser parking need.

9.2.8.1.2. A business is primarily oriented to walk-in trade.

9.2.8.2. Whenever the UDO Administrator allows or requires a deviation from the presumptive parking requirements set forth in Section 9.28, he/she shall enter on the face of the permit the parking requirement that he/she imposes and the reasons for allowing or requiring the deviation.

9.2.8.3. If the UDO Administrator concludes, based upon information he/she receives in the consideration of a specific development proposal, that the presumption established in Section 9.28 for a particular use classification is erroneous, he/she shall initiate a request for an amendment to the Table of Parking Ratios in accordance with the procedures set forth in Section 4.1.

ARTICLE 9.
PERFORMANCE STANDARDS

SECTION 9.3 REQUIREMENTS FOR PARKING LOTS.

Where parking lots for more than five (5) cars are permitted or required or where any principal building enlargement is 20% or greater of its existing size as specified by Section 5.1.2., the following provisions shall be complied with:

9.3.1. The parking spaces may be used only for parking, but shall not preclude occasional use as convention and festival exhibits or parking of rental vehicles. Parking spaces may not be used for loading, sales, dead storage, repair work, dismantling or servicing.

9.3.2. All entrances, exits, barricades at sidewalks, and drainage plans shall be approved and constructed before occupancy.

9.3.3. Only one entrance and one exit sign no larger than two square feet prescribing parking regulations may be erected at each entrance or exit.

9.3.4. Vehicle accommodation areas shall be graded and improved with crushed stone, gravel, asphalt, concrete, or other suitable material to provide a surface that is stable and will help to reduce dust and erosion. Whenever such a vehicle accommodation area abuts a paved street, the driveway leading form such street to such area (or, if there is no driveway, the portion of the vehicle accommodation area that opens onto such streets), shall, at a minimum, be paved for a distance of fifteen (15) feet back from the edge of the paved street. This subsection shall not apply to single-family or two-family residences or other uses that are required to have only one or two (2) parking spaces.

9.3.5. Parking spaces in areas paved with an impervious surface shall be appropriately demarcated with painted lines or other markings.

9.3.6. Vehicle accommodation areas shall be properly maintained in all respects. In particular, and without limiting the foregoing, vehicle accommodation area surfaces shall be kept in good condition (free from potholes, etc.) and parking space lines or markings shall be kept clearly visible and distinct.

9.3.7. Vehicle accommodation areas for multi-family developments shall be constructed of masonry, concrete, or asphalt. This subsection shall not apply to single-family residences.

9.3.8. Where parking or loading areas are provided adjacent to a public street, ingress and egress thereto shall be made only through driveways not exceeding twenty-five (25) feet in width at the curb line of said street, except where the UDO Administrator finds that a greater width is necessary to accommodate the vehicles customarily using the driveway.

9.3.9. Where two or more driveways are located on the same lot, the minimum distance between such drives shall be thirty (30) feet or one-third of the lot frontage, whichever is greater.

9.3.10. No driveway shall be located closer than twenty-five (25) feet to any street intersection.

9.3.11. Unless no other practicable alternative is available, vehicle accommodation areas shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing onto a public street. This requirement does not apply to parking areas consisting of driveways that serve one or two dwelling units, although backing onto arterial streets is discouraged.

9.3.12. Vehicle accommodation areas of all developments shall be designed so that sanitation, emergency, and other public service vehicles can serve such developments without the necessity of backing unreasonable distances or making other dangerous or hazardous turning movements.

9.3.13. Every vehicle accommodation area shall be designed so that vehicles cannot extend beyond the perimeter of such area onto adjacent properties or public rights-of-way. Such areas shall also be designed so that vehicles do not extend over sidewalks or tend to bump against or damage any wall, vegetation, or other obstruction.

9.3.14. Circulation areas shall be designed so that vehicles can proceed safely without posing a danger to pedestrians or other vehicles and without interfering with parking areas.

9.3.15. Refer to Article 9, Part I for landscaping requirements.

9.3.16. Refer to Article 9, Part VIII for lighting requirements.

SECTION 9.4 MANUFACTURED HOME AND TRAILER PARKING AND STORING.

It shall be unlawful to park or otherwise store for any purpose whatsoever any manufactured home or trailer within any zoning district unless a storing permit for any manufactured home to be parked or stored for longer than seven (7) days is obtained from the UDO Administrator.

ARTICLE 9.
PERFORMANCE STANDARDS

SECTION 9.5 VEHICLE STORAGE.

9.5.1. Residential Districts.

Vehicles intended for personal use may be parked or stored on property zoned for residential use. Commercial trucks, vans, or trailers driven home must be parked in a garage or carport or in the driveway and never on the street. Inoperative vehicles, including trucks, vans, or trailers may not be stored in a residential district.

9.5.2. Business and Industrial Districts.

Customer and employee parking is permitted along with the parking and storing of governmental or commercial vehicles, in any business or industrial district. Inoperative vehicles shall only be permitted to be parked or stored while undergoing repairs at a commercial garage or automobile service station or if stored in an approved junk or wrecking yard.

SECTION 9.6 VEHICLE STACKING AREAS.

9.6.1. Vehicle Stacking Areas.

The vehicle stacking standards of this section shall apply unless otherwise expressly approved by the UDO Administrator. Additional stacking spaces may be required by the UDO Administrator where trip generation rates suggest that additional spaces will be needed.

9.6.2. Minimum Number of Spaces.

Off-street stacking spaces shall be provided as follows:

Activity Type	Minimum Stacking Spaces	Measured From
Automated teller machine (ATM), as an accessory use	3	Teller
Bank teller lane	4	Teller or Window
Car wash bay, full-service	6	Bay
Car wash bay, self-service	3	Bay
Dry cleaning/laundry drive-through	3	Cleaner/laundry window
Gasoline pump island	3	Pump island
Gatehouse, staffed	4	Gatehouse
Gate, unstaffed	2	Gate
Pharmacy pickup	3	Pharmacy window
Restaurant, drive-through	6	Order box

Activity Type	Minimum Stacking Spaces	Measured From
Restaurant, drive-through	4	Between order box and pick-up window
Valet parking	3	Valet stand
Other	Determined by the UDO Administrator in consideration of an approved study prepared by a registered engineer with expertise in Transportation Engineering.	

9.6.3. Design and Layout of Stacking Spaces.

Required stacking spaces shall be subject to the following design and layout standards:

9.6.3.1. Size. Stacking spaces shall be a minimum of eight (8) feet in width by twenty-five (25) feet in length.

9.6.3.2. Location. Stacking spaces shall not impede on- or off-site traffic movements or movements into or out of off-street parking spaces.

9.6.3.3. Design. Stacking spaces shall be separated from other internal driveways by raised medians if deemed necessary by the UDO Administrator for traffic movement and safety.

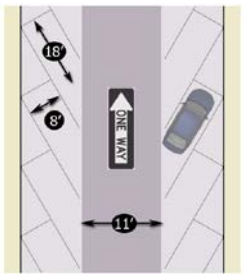
SECTION 9.7 PARKING SPACE DIMENSIONS.

9.7.1. Angled Parking.

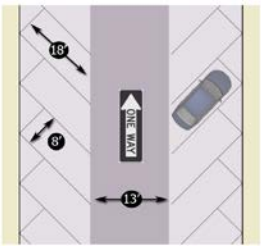
Parking stalls intended for the use of standard size automobiles shall have a minimum size of eight (8) feet by eighteen (18) feet for angled parking. All angled parking stalls shall be provided with the minimum aisle width specified below depending on their angle of entry. This width is designed to accommodate traffic flow within the parking area and allow reasonable room for maneuvering in and out of parking stalls.

9.7.1.1. One-Way Traffic.

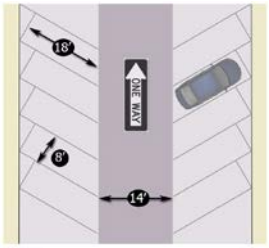
Degree of Angle	*Aisle Width*
30E	11 feet
45E	13 feet
60E	14 feet

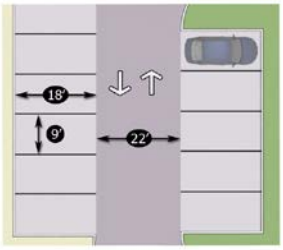


30 degrees



45 degrees





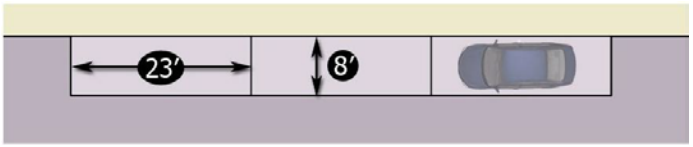
60 degrees

90E	22 feet

9.7.1.2. Two-Way Traffic. Aisle width: 22 feet.

90 degrees

9.7.2. Parallel Parking.

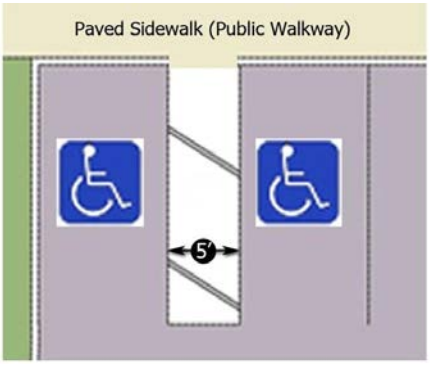


Parallel parking stalls for standard size automobiles shall have a minimum size of eight (8) feet by twenty-three (23) feet. All parallel parking stalls shall have a minimum of ten (10) feet for maneuvering space in one-way traffic and twenty (20) feet maneuvering space in two-way traffic.

SECTION 9.8 HANDICAPPED REQUIREMENTS.

9.8.1. Handicapped parking spaces shall be in accordance with the regulations set forth by the Americans with Disabilities Act (ADA) and the NC Department of Transportation and NC Division of Motor Vehicles ADA requirements. All handicapped spaces shall be identified by pavement markings and by appropriate signage approved by the NC Department of Transportation. Handicapped parking shall be required on all multi-family and nonresidential sites.

9.8.2. Handicapped parking spaces shall be located in the closest proximity to major building entrances, but in no event shall such spaces be located more than 100 feet from a major building entrance.



9.8.3. Handicapped parking spaces shall be a minimum of eight (8) feet in width by twenty (20) feet in length and shall have an adjacent access aisle that has a minimum width of five (5) feet. Two accessible parking spaces may share a common access aisle.

9.8.4. The minimum number to be provided for all multi-family and nonresidential sites is as follows:

Total Number of Spaces in the Lot	Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6

201 or more	7 plus one for every 100 spaces over 200

9.8.5. The number of accessible spaces shall be in addition to those required by the minimum parking ratios.

9.8.6. All spaces for the disabled shall have access to a curb-ramp or curb-cut when necessary to allow access to the building served, and shall be located so that users will not be compelled to wheel behind parked vehicles.

9.8.7. Parallel parking spaces for the disabled shall be located either at the beginning or end of a block or adjacent to alley entrances. Elective curbs adjacent to such spaces shall be of a height which will not interfere with the opening and closing of motor vehicle doors.

9.8.8. The first one out of every eight (8) accessible parking spaces shall be a van accessible space. Van parking spaces shall have an adjacent access aisle a minimum of eight (8) feet in width and a vertical clearance of at least eight (8) feet along the vehicular route to the parking space.

SECTION 9.9 LOADING AREAS.

9.9.1. Location.

9.9.1.1. No loading spaces shall be located within 30 feet of street intersections or in any required front, side, or rear yard.

9.9.1.2. A minimum setback of fifty (50) feet shall be required where loading docks face a residential district or a structure with first-floor residential uses, unless the loading area is completely screened from view with an eight (8) foot high masonry wall in accordance with the requirements of Section 7.2, Retaining Walls and Fences.

9.9.1.3. Loading areas shall be located to provide the most convenient access to the use being served. Generally, loading areas should be adjacent to the building.

9.9.1.4. Loading and unloading areas shall be so located and designed that the vehicles intended to use them can (1) maneuver safely and conveniently to and from a public right-of-way and (2) complete the loading and unloading operations without obstructing or interfering with any public right-of-way or any parking space or parking lot aisle.

9.9.2. Surfacing.

Generally, all open off-street loading areas shall be paved with an all-weather material such as concrete or asphalt, designed to carry the heaviest vehicle loads that can commonly be expected.

Consideration should be given to the weight of fire and sanitation equipment as well as delivery vehicles.

9.9.3. Design.

9.9.3.1. Loading berths for office uses shall be a minimum of twelve (12) feet wide by thirty-five (35) feet long with a height clearance of fourteen (14) feet.

9.9.3.2. All other loading berths shall be a minimum of twelve (12) feet wide and fifty-five (55) feet long with a height clearance of fourteen (14) feet.

9.9.4. Utilization.

Space allocated to any off-street loading space, accessory drives, or aisles, shall not be used to satisfy the space requirements for any off-street parking or trash handling facilities.

9.9.5. Ingress and Egress.

Each required off-street loading space shall be provided with a means of unobstructed ingress and egress to an alley or onto a public street wide enough to accommodate expected vehicles. Where such ingress and egress is made into a public street, it shall be through driveways or openings which meet required standards. Permanent wheel stops or curbing shall be provided to prevent any vehicle using the loading area from encroachment on the required front yards, side yards, or adjoining property.

9.9.6. Number of Spaces Required.

9.9.6.1. Loading spaces shall be required for uses which normally handle large quantities of goods, including but not limited to educational, institutional, manufacturing and industrial, professional and services offices, retail sales and services, transportation, and wholesale sales and warehousing.

9.9.6.2. The numbers in the table below shall serve as a guideline for determining the number of loading spaces required.

Gross Floor Area of Building	Number of Spaces
0-1,000 sq ft	0
1,001-39,999 sq ft	1
40,000-99,999 sq ft	2
100,000-159,999 sq ft	3
160,000-239,999 sq ft	4

240,000 sq ft and over	5

9.9.6.3. The UDO Administrator may require one or more additional loading areas if the magnitude of the use would anticipate the need for more loading or standing space.

SECTION 9.10 PARKING RATIOS.

The following defines parking ratios for general use classifications as delineated in the Table of Uses and Activities (Section 6.5). All uses are not defined; however, the broad categories listed should correlate with each use listed within the use table included in Section 6.5. If there are questions regarding how a given project should be classified, the methodology for defining a required parking requirement shall be determined by the entity designated by this Ordinance to approve a particular development. Parking requirements for all government sponsored/owned facilities, such as schools, shall be determined on a case-by-case basis through the development plan approval process. Parking requirements shall be rounded to the nearest whole number. For example, an 875 square foot restaurant would require 6 parking spaces (875/150 = 5.83 = 6).

Classification	**Off-Street Parking Requirement**
RESIDENTIAL	
Dwelling, single-family	2 spaces
Dwelling, manufactured home	2 spaces
Dwelling, multi-family ▪ One bedroom ▪ Two bedrooms ▪ Three bedrooms or more	 1.5 spaces per unit 1.75 spaces per unit 2 spaces per unit
ACCESSORY USES/BUILDINGS	
Accessory business or residential unit (including home occupations)	2 spaces per business or residence
Accessory buildings, non single-family residential	Same ratio as the principal use
COMMERCIAL & OFFICE/INSTITUTIONAL	
Retail	4 spaces per 1,000 square feet
Restaurant	1 space per 150 square feet enclosed floor area
Office	3 spaces per 1,000 square feet
Lodging	1 space per room plus 1 space per employee
Institutional/civic	1 space per 4 seats or 4 spaces per 1,000 square feet, whichever is greater

Classification	Off-Street Parking Requirement
INDUSTRIAL USES	
Adult entertainment establishments	1 space per 100 square feet of gross floor area or 1 space per every 3 persons of maximum seating capacity, whichever is greater; plus 1 space per employee
All other industrial uses	1 space per 500 square feet of gross floor area OR 1 space per employee based on largest number of employees on site at any one time, whichever is greater
RECREATION/CONSERVATION USES	
The most applicable of the following standards shall apply for all recreational uses:	1 space per 4 fixed seats; 1 space for each 40 square feet of floor area available in establishment as a meeting room; 1 space for each 150 square feet of gross floor area.
TEMPORARY USES/STRUCTURES	
To be determined by the UDO Administrator based on the site specific conditions and principal use.	
AGRICULTURAL USES	
To be determined by the UDO Administrator based on the site specific conditions.	

PART II. LANDSCAPE REQUIREMENTS

SECTION 9.11 PURPOSE.

The purpose of this section is to establish minimum requirements to provide adequate visual buffering and screening of permitted uses, structures, parking areas, and preservation of protected trees. The intention of these requirements is to satisfy the following objectives:

9.11.1. To provide attractive visual buffering between different land uses and enhance city beautification.

9.11.2. To safeguard and enhance property values and to protect public and private investment by providing standards for the protection of existing vegetation and root zones and the installation of new vegetation.

9.11.3. To mitigate stormwater runoff and erosion, enhance air quality, conserve energy, and aid in abating noise, glare, and heat.

9.11.4. To establish and maintain the maximum sustainable amount of tree cover on public and private lands.

9.11.5. To maintain trees in a healthy and non-hazardous condition through good arboricultural practices.

9.11.6. To establish, maintain, and protect appropriate diversity in tree species and age classes to provide a stable and sustainable urban forest.

SECTION 9.12 APPLICABILITY.

The four standard requirements in this section are: Street Yards (Section 9.4), Parking Facility Landscaping (Section 9.5), Bufferyards (Section 9.6), and Screening of Dumpsters (Section 9.7.3). The requirements of this Article 9, Part I shall be applicable to the following situations:

9.12.1. Multi-Family Residential Development.

When ten (10) or more parking spaces are required for all phases of development excluding all residential developments which contain solely detached single-family dwelling units.

9.12.2. Nonresidential Development.

> ***9.12.2.1. New Construction.*** When a permitted use, a use or combination of uses contained within a conditional use permit require ten (10) or more parking spaces.

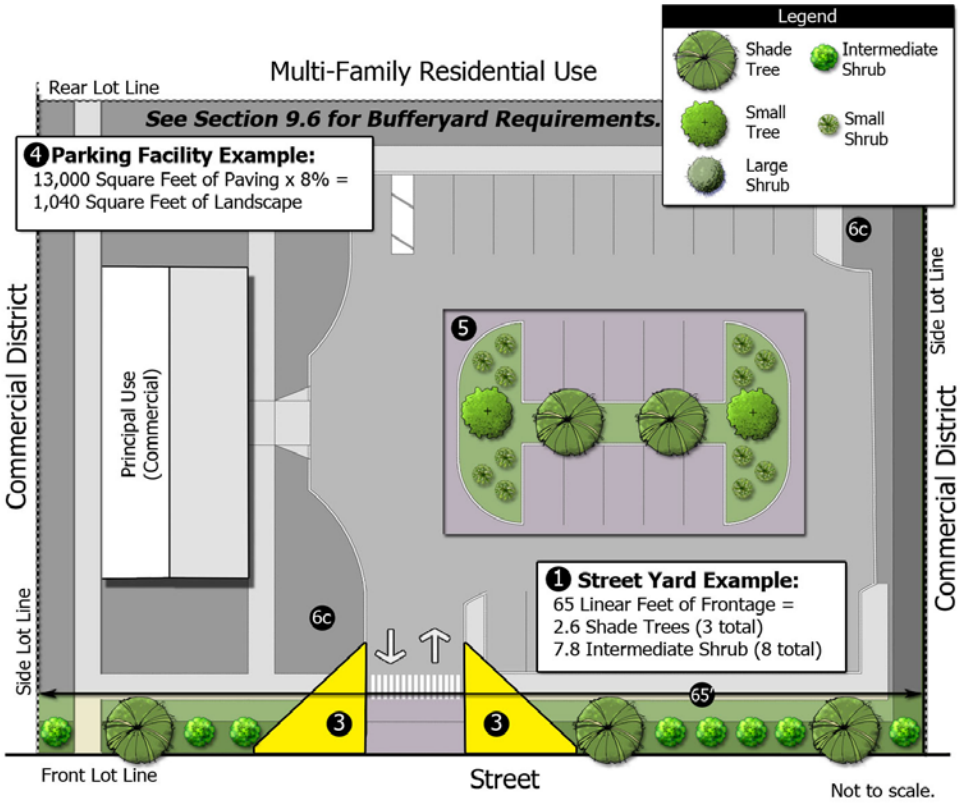
9.12.2.2. Existing Development. When there is a change from an existing use to a new use which requires additional parking and the new use requires ten (10) or more parking spaces.

9.12.2.3. Expansion of Structure. When there is an expansion of an existing structure by greater than 25% of the gross floor area and that use requires ten (10) or more additional parking spaces.

9.12.2.4. Reconstruction of Structure. When there is damage or destruction to an existing structure beyond 50% of its assessed value, the reconstruction must conform to the new construction standards of this section.

9.12.2.5. Expansion of Parking Facility. When there is an expansion of the parking facility by a minimum of 10% of the parking with a minimum of ten (10) total spaces.

Street Yard & Parking Facility Landscape Example (Sections 9.4 & 9.5)



SECTION 9.14 STREET YARD REQUIREMENTS.

Street yards are required for all commercial, industrial, and multi-family residential development with eight (8) or more parking spaces.

❶ Minimum Standards: The minimum depth of all street yards shall be 7.5 feet. For every 50 linear feet of frontage, or fraction thereof, the street yard shall contain a minimum of two (2) Shade Trees and six (6) Intermediate Shrubs. Newly installed plant material shall be evenly distributed, where possible.

❷ If there are existing trees in the proposed street yard area, the UDO Administrator may grant credit toward meeting the requirement for preservation of those trees as specified by the Tree Credits table.

❸ No planting material will be allowed which, at planting or at maturity, will impede vision between a height of three (3) feet and ten (10) feet in the sight visibility triangle specified by Section 2.15.

SECTION 9.15 PARKING FACILITY REQUIREMENTS.

❹ Minimum Standards: For parking facilities having 15 or more parking spaces, at least 8% of the gross paved area of the parking facility shall be landscaped and located in the interior of the facility.

❺ Planting islands shall include at least one Shade Tree or one Small Tree and six Small Shrubs. At least 50% of the trees planted shall be Shade Trees.

❻ In support of the above, the following standards shall apply to interior plantings:

ⓐ All plantings shall be evenly distributed throughout the parking facility.

ⓑ All interior plantings shall be curbed or otherwise physically protected. Depressed landscaped islands shall be permitted for stormwater management purposes as approved by the UDO Administrator.

ⓒ Landscaped islands shall be installed at each block of 15 consecutive parking spaces and at the ends of all parking rows. Landscaped islands shall contain at least 100 square feet in area and be at least 8 feet in width, measured from back of curb to back of curb.

SECTION 9.16 BUFFERYARD REQUIREMENTS.

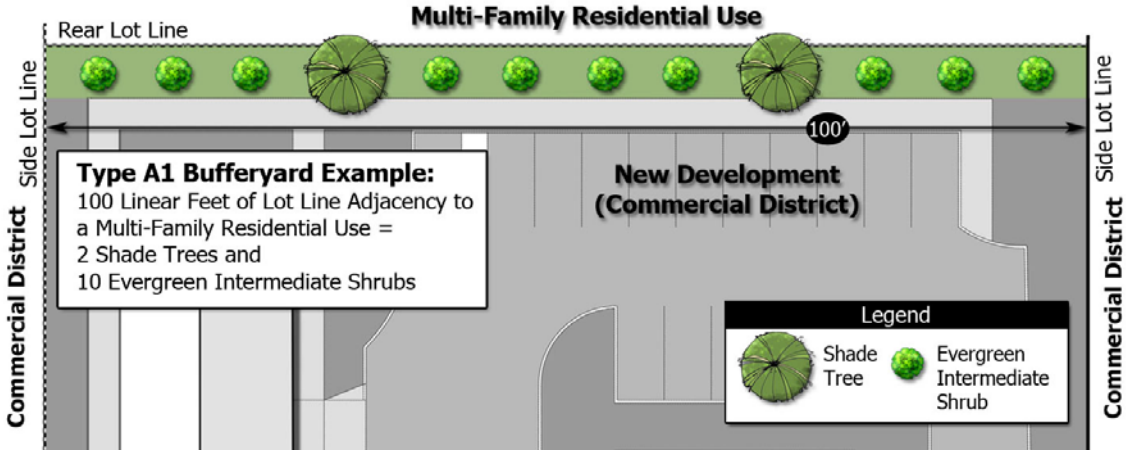
Bufferyards are required for multi-family residential development with ten (10) or more parking spaces and nonresidential development as outlined in Section 9.2. See the table below to determine the type of bufferyard required.

	Adjacent Land Use			
Zoning District and/or Use To Be Developed (below)	Industrial	Commercial (including O/I)	Single-Family Residential	Multi-Family Residential (10 or more parking), PUD, PRD
Industrial	N/A	Type A	Type B	Type A
Commercial (including O/I)	Type A	N/A	Type B	Type A
Multi-Family Residential (10 or more parking), PUD, PRD	Type A	Type A	Type A	N/A

Bufferyard requirements as they pertain to the Table of Uses and Activities (Section 6.5) are as follows:

(1) Industrial shall include all uses allowed within the I-B, I-1, and I-2 districts.
(2) Commercial (including O/I) shall include all uses allowed within the O&I, B-1, B-2, and SC districts.
(3) Multi-Family Residential shall include all uses allowed within the RA-6, RA-5, and RO districts.
(4) Single-Family Residential shall include all uses allowed within the RA-20, RA-15, RA-12, RA-8, and RA-7.

The following provides an ***example*** of a **Type A bufferyard** for a developed commercial district adjacent to a multi-family use in a residential district.



❶ Type A Bufferyard Screening. A medium density screen intended to block visual contact between uses and to create special separation.

ⓐ Type A1: Minimum of 7.5 feet wide. For every linear 100 feet, or fraction thereof, the screen shall consist of a combination of a minimum of 2 Shade Trees planted evenly at 40 feet on center, and 10 evergreen Intermediate Shrubs planted 8 feet on center.

-OR-

ⓑ Type A2: Minimum of 5 feet wide. For every 100 feet, or fraction thereof, the screen shall consist of a combination of at least 3 Shade Trees planted evenly at 40 feet on center, and 15 evergreen Intermediate Shrubs 6 feet on center.

❷ Type B Bufferyard Screening. A high density screen intended to exclude virtually all visual contact between uses and to create a special separation.

ⓐ Type B1: Minimum width of 15 feet, except for the B-2 district which shall have a minimum of 7.5 feet. For every linear 100 feet, or fraction thereof, the screen shall consist of a combination of a minimum of 3 Shade Trees planted evenly at 30 feet on center, and 15 evergreen Large Shrubs planted 6 feet on center.

-OR-

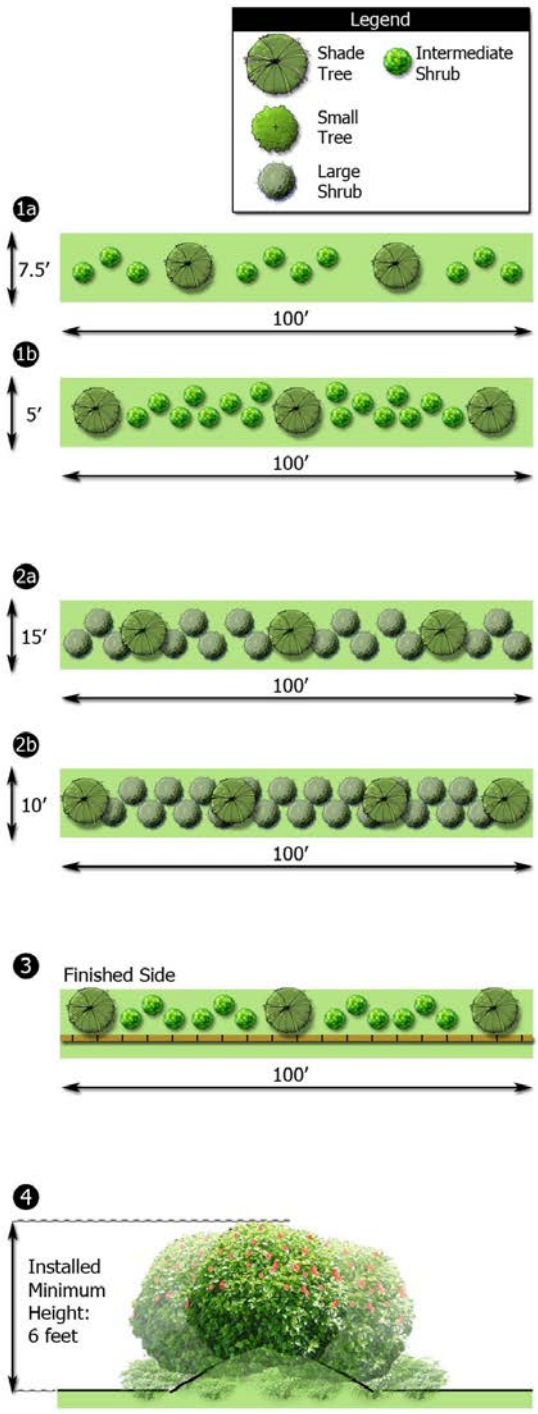
ⓑ Type B2: Minimum width of 10 feet, except for the B-2 district which shall have a minimum of 5 feet. For every linear 100 feet, or fraction thereof, the screen shall consist of a minimum of 4 Shade Trees planted 30 feet on center, and 20 evergreen Large Shrubs planted 5 feet on center.

OPTIONS TO TYPE A AND/OR TYPE B

❸ Type C Bufferyard Screening. An opaque fence or opaque wall may be used in place of 50% of required bufferyard screening plants. The design, color and materials of any fence or screen used to meet bufferyard requirements shall be approved by the UDO Administrator. The side of the fence facing the affected property owner shall be the finished side of the fence. All planted screening required to be used in conjunction with a fence shall be approved by the UDO Administrator and planted on the finished side of the fence facing the affected use, and the remaining plantings shall be equally distributed in the bufferyard.

❹ Type D Bufferyard Screening. A combination earthen berm with vegetation may be used as follows:

- An earthen berm may be used in conjunction with planted vegetation made up of small, intermediate, and large shrubs, as approved by the UDO Administrator, provided that the combined height of the berm and planted vegetation shall be an installed minimum height of 6 feet.
- The slope of the berm shall be stabilized with vegetation and no steeper than 3:1. The height of the berm shall be a maximum of 6 feet, with a level or rounded area on top of the berm. The berm shall be constructed of compacted earth.



NOTE: It is recommended and encouraged that native species and related cultivars be planted.

SECTION 9.17 ADDITIONAL REQUIREMENTS.

9.17.1. Existing Trees and Shrubs.

Any existing trees within required bufferyards shall be encouraged to be utilized and supplemented as necessary to meet bufferyard screening requirements. Existing trees intended to meet bufferyard screening requirements shall be protected from detrimental actions such as vehicle or equipment movement, excavating and grading, and installation of storage or structured elements. Credit for existing trees will be based on the following:

Existing Tree Caliper (inches)	Number of Tree Credits Given
2-6	1
7-12	2
13-18	3
19-24	4
25 or greater	5

9.17.2. Uses in the Bufferyard.

No activities shall occur in the bufferyard except for maintenance of the bufferyard, required ingress and egress and the installation and maintenance of water, sewer, electrical, and other utility systems where the installation causes minimal disturbance of existing vegetation.

9.17.3. Uses in the Rear Yard and Side Yards Abutting a Residential Use.

The following uses shall be shielded from view from the property line of adjacent residentially used or zoned property by means of an Opaque Fence, Opaque Wall, or Solid Vegetative Buffer:

9.17.3.1. Outside storage areas.

9.17.3.2. Loading/unloading areas.

9.17.4. Dumpsters or Other Trash Holding Areas.

All dumpsters or other trash holding areas shall be screened on three (3) sides by means of an Opaque Fence, Opaque Wall, or Solid Vegetative Buffer.

9.17.5. Encroachment into Setbacks.

9.17.5.1. If an existing structure is located within a setback where the implementation of the Streetyard and/or Bufferyard requirements are physically impossible and the encroachment into the yard (streetyard or bufferyard) allows for a minimum of three (3) feet of planting area, only the required shrubs shall be planted.

9.17.5.2. If the encroachment into the yard (streetyard or bufferyard) allows for less than three (3) feet of planting area, no planting shall be required in that yard.

SECTION 9.18 INSTALLATION.

9.18.1. Plants shall meet the standards for plant quality and size as defined in the most recent version of the ■American Standard of Nursery Stock• manual.

9.18.2. Plants shall be installed per the installation details included in Appendix B of this Ordinance.

SECTION 9.19 MAINTENANCE.

9.19.1. All existing vegetation that is used to meet landscaping requirements, all required plants, and all required berms shall be maintained by the owner of the property on a continuing basis for the life of the development.

9.19.2. Opaque Fences or Opaque Walls shall be maintained, cleaned and repaired by the owner of the property on a continuing basis for the life of the development. Such fencing shall be kept free of litter and advertising. Opaque fences or walls may be subject to periodic inspection by the UDO Administrator.

9.19.3. A new certificate of occupancy/building permit or a complaint will result in an inspection for compliance.

SECTION 9.20 LANDSCAPE PLAN.

Landscape plans shall be submitted with minor or major site plans, conditional use permit application, and/or request for a zoning certificate of compliance, if Section 9.2 applies. These plans shall contain the following information:

9.20.1. Date of plan preparation.

9.20.2. Project name and description of land use.

9.20.3. Project owner and mailing address.

9.20.4. A tree removal permit as specified in Section 9.3.2.

SECTION 9.21 TREE PROTECTION DURING CONSTRUCTION.

Tree preservation is a pre-planning activity and will be thoroughly considered prior to development of engineering and/or architectural plans and prior to initiation of construction projects. Protected trees shall be guarded during development against the following:

9.21.1. Unnecessary cutting, breaking, or skinning of roots.

9.21.2. Skinning and bruising of bark.

9.21.3. Excessive vehicular and foot traffic within drip lines.

9.21.4. Parking vehicles within drip lines.

9.21.5. During the land clearing and construction stage of development, the developer shall erect and maintain protective barriers (to the Building Inspector's specifications consistent with good management practices) around all trees or groups of trees to be protected from the center of the tree(s) to the dripline. The developer shall not allow the movement of equipment or the storage of equipment, materials, debris or fill to be placed within the protective barrier.

9.21.6. During the construction stage of development, the developer shall not allow the cleaning of equipment or material within the drip line of any tree or groups of trees to be protected. Neither shall the developer allow the disposal of waste materials such as paint, oil solvents, asphalt, concrete, mortar and so on within the drip line of any tree or groups of trees.

9.21.7. No attachments or wires other than those of a protective nature shall be attached to any tree.

9.21.8. Soil disturbances within the drip line of a protected tree shall be limited to two inches in depth removed or two inches in depth added. Any soil added under the drip line of the tree shall be a loamy soil mix to ensure minimal compaction.

9.21.9. During land clearing and construction stage of development, the UDO Administrator shall periodically inspect the site to ensure compliance with the provisions of this section.

9.21.10. Tree location and replacement activity permitted or required under this section shall be done in accordance with standard forestry practices and procedures, and all such plantings shall be reasonably maintained and attended to promote successful establishment thereof.

SECTION 9.22 RECOMMENDED PLANT LIST.

The following is a recommended plant list to be utilized in the preparation of Landscape Plans to meet vegetation requirements. NOTE: Native vegetation is preferred. Plants not listed may be accepted by the UDO Administrator if they meet the standards defined by this Section. Some plants are listed under multiple categories as many of these plants are offered in numerous varieties. Mature height and spread of each plant is contingent on the variety. It is highly recommended that Landscape Plans be prepared by or in consultation with a Registered Landscape Architect or qualified landscape design professional.

Key:

E = EVERGREEN

N = NATIVE

D = DROUGHT TOLERANT

R = PRONE TO LARGE SURFACE ROOTS

Botanical Name	Common Name	
Shade Tree ■ installed at 12-14 foot height and 2-inch caliper, mature height greater than 30 feet		
Acer rubrum	Red Maple	N, R
Fagus grandifolia	American Beech	N, R
Ginkgo biloba (male only)	Ginkgo	D
Gleditsia tricanthos inermis	Thornless Honeylocust	N, R
Liquidambar styraciflua	American Sweetgum	N, D, R
Magnolia grandiflora	Southern Magnolia	E, N, D
Nyssa sylvatica	Black Gum	N
Platanus acerifolia	London Plane Tree	D, R
Quercus nigra	Water Oak	N, D
Quercus shumardii	Shumard Oak	N, D
Quercus phellos	Willow Oak	N, D
Quercus virginiana	Live Oak	E, N, D, R
Taxodium distichum	Baldcypress	N, D
Ulmus parvifolia	Lacebark Elm	D
Small Tree ■ installed at 8-10 foot height and 1-inch caliper, mature height less than 30 feet		
Acer buergerianum	Trident Maple	D
Amelanchier canadensis	Shadblow Serviceberry	N
Betula nigra	River Birch	N
Cercis canadensis	Eastern Redbud	N, D
Cornus florida	Dogwood	N
Elaegnus angustifolia	Russian Olive	D
Fraximus americana	White Ash	N

Botanical Name	Common Name	
Ilex cassine	Dahoon Holly	E
Ilex latifolia	Lusterleaf Holly	E, D
Ilex opaca	American Holly	E, N, D
Ilex vomitoria	Yaupon Holly	E, N, D
Ilex x attenuate ♣Fosters♠	Foster♠s Holly	E, D
Ilex x ♣Nellie Stevens♠	Nellie Stevens Holly	E, D
Koelreuteria paniculata	Goldenraintree	D
Lagerstromia	Crapemyrtle	D
Magnnolia grandiflora ♣Little Gem♠	Little Gem Magnolia	E, N, D
Magnolia virginiana	Sweetbay Magnolia	N
Magnolia x souangiana	Saucer Magnolia	D
Osmanthus americanus	Devilwood	E, N
Oxydendrum arboretum	Sourwood	N
Persea borbonia	Redbay	E, N
Prunus caroliniana	Carolina Cherrylaurel	E, D
Quercus geminate	Sand Live Oak	E, N
Vitex angus-castus	Chastetree	D

Large Shrub ■ installed at 5-foot height, maintained height at 6-10 feet

Berberis julianae	Wintergreen Barberry	E, D
Cleyera japonica	Japanese Cleyera	E
Elaeagnus pungens	Thorny Elaeagnus	E
Euonymous japonicas	Japanese Euonymus	E
Ilex cornuta	Holly	E, D
Ilex vomitoria	Yaupon Holly	E, N, D
Ligustrum japonicum	Wax Leaf Privet	E, D
Ligustrum lucidum	Glossy Privet	E, D
Mahonia bealei	Leatherleaf Mahonia	E
Myrica cerifera	Southern Waxmyrtle	E, N, D
Osmanthus x fortunei	Fortunes Osmanthus	E, D
Photina serulata	Chinese Photina	E
Pittosporum tobira	Japanese Pittosporum	E, D
Podocarpus macrophyllus	Chinese Podocarpus	E, D
Rhaphiolepis umbellata	Indian Hawthorn	E

Intermediate Shrub ■ installed at 36-inch height, maintained height at 4-6 feet

Abelia x grandiflora	Glossy Abelia	E, D

Botanical Name	Common Name	
Acuba japonica	Japanese Acuba	E, D
Clethera alnifolia	Sweet Pepperbush	N
Hydrangea macrophylla	Bigleaf Hydrangea	D
Ilex cornuta	Chinese Holly	E, D
Ilex crenata	Japanese Holly	E, D
Ilex glabra	Inkberry Holly	E, N, D
Juinperus chinensis	Chinese Juniper	E
Loropetalum chinensis	Chinese Fringe-Flower	E
Raphiolepis indica	Indian Hawthorm	E
Rhododendron obtusum	Kurume Azalea	E, N, D
Viburnum suspensum	Sandwanka Viburnum	E
Small Shrub ▪ installed at 18-inch height, maintained height at 3-4 feet		
Abelia x grandiflora (dwarf var.)	Glossy Abelia	E, D
Acuba japonica (dwarf var.)	Japanese Acuba	E, D
Berberis thunbergii	Japanese Barberry	D
Buxus microphylla var. koreana	Korean Boxwood	E, D
Euonymus japonicus ♣Microphyllus Variegatus♠	Var. Boxleaf Euonymus	E
Gardenia jasminoides ♣Radicans♠	Cape Jasmine	E, D
Ilex crenata ♣Soft Touch♠	Japanese Holly	E, D
Ilex cornuta ♣Carissa♠	Carissa Holly	E, D
Ilex vomitoria ♣Nana●	Dwarf yaupon Holly	E, N, D
Itea virginica	Virginia Sweetspire	N, D
Jasminium nudiflorum	Winter Jasmine	E, D
Juniperus chinensis	Chinese Juniper	E
Nandina domestica	Dwarf Nandina	E, D
Pieris japonica	Japanese Pieris	E
Pittosporum tobira	Japanese Pittosporum	E
Raphiolepis indica	Indian Hawthorm	E, D
Spirea japonica	Japanese Spirea	D
Spirea nipponica	Snowmoudn Spirea	D

PART III. BUILDING FACADE DESIGN

SECTION 9.23 INTENT.

In order to present an attractive ■face• for the City of Kinston, buildings along roadways should enhance the image of the city▲s jurisdiction. The emphasis shall be on architectural detail and human-scale design.

SECTION 9.24 APPLICABILITY.

The requirements of this section shall apply in the following circumstances:

9.24.1. Construction of any new use classified as Commercial, Office/Institutional, or Multi-Family.

9.24.2. Construction of any new use classified as Industrial when the building facade is located within 100 feet of a public roadway.

9.24.3. Expansion or modification of an existing Commercial or Office/Institutional use that increase the total enclosed floor area by at least 50% or 5,000 square feet, whichever is greater.

9.24.4. Where compliance with these standards is explicitly required in other portions of this Ordinance.

SECTION 9.25 EXEMPT.

Communication towers shall be exempt from these requirements.

SECTION 9.26 STANDARDS.

9.26.1. Materials. All facades that are visible from a public roadway or an abutting a residential district or use shall be constructed of one or a combination of the following materials: concrete aggregate, stucco, brick, stone, glass or wood, faced concrete block. Artificial materials which closely resemble these materials shall also be allowed. Pre-engineered metal building materials shall not be used on facades.

9.26.2. Scale. Primary facades shall incorporate details at the pedestrian level (below ten feet) that emphasize human scale.

9.26.3. Transparency. Facades of all commercial structures facing a street or primary travelway shall incorporate transparent features on at least 25% of the surface area on the ground floor.

9.26.4. Roofing Materials. Recommended roofing materials include slate shingles, asphalt and fiberglass shingles, metal standing seam or tiles. Partial (occupying less than three sides) mansard roofs are discouraged.

9.26.5. Outdoor Site Lighting. Shall be selected, designed, located, and installed so that light trespass onto public rights-of-way and adjacent residential property is significantly limited and direct glare is minimized.

9.26.6. Screening of Utilities and Mechanical Equipment.

9.26.6.1. Roof top mounted equipment shall not be visible from public rights-of-way or adjacent residential property. Equipment shall be screened by parapet walls or continuous mechanical screens that are compatible with and complementary to the overall building design. Where complete screening is not technically feasible due to differences in grade elevations, then the parapet or screens shall be at least as tall as the tallest piece of equipment.

9.26.6.2. Ground mounted utilities and equipment, including outdoor service, storage, loading, and mechanical areas shall be located on non-character defining facades and shall be screened by garden walls, fences, or solid vegetation so they are not visible from public rights-of-way or adjacent residential properties.

9.26.6.3. Locate noise-generating equipment to mitigate the impact on adjacent properties and public rights-of-way. Equipment that generates more than 60 decibels shall not be located next to a residential development or must incorporate mufflers or other noise-reducing equipment.

9.26.7. Fencing. Solid fencing shall not be used to obscure the building facade from streets and travelways. Where used, solid fencing shall be located behind the building line of the primary facade(s). Chain link fencing is not permitted where it will be visible from streets and travelways unless it is completely hidden by a permanently maintained vegetative cover.

SECTION 9.27 ALTERNATIVE COMPLIANCE.

Alternative compliance may be approved in writing by the UDO Administrator provided the design alternatives accommodate the following:

9.27.1. Use of high quality, durable materials is required. Materials used for the primary facades shall return along secondary sides a minimum distance as required based on visibility from public rights-of-way or adjacent residential property. Visible rear and side facades shall be designed with as much attention as the other elevations.

9.27.2. Visual balance shall be achieved with the use of order and symmetry within separate building elements.

9.27.3. Architectural elements, details or massing components shall be utilized to create visual organization through repetition and spacing.

9.27.4. Primary facades shall provide appropriate architectural transitions between horizontal elements or differences in apparent floor-to-floor heights.

9.27.5. Design and detailing of materials shall result in an authentic appearing structure, with dimensions and spans of visible materials related to the structural properties. Elements designed to appear as load-bearing shall be visually supported by other elements directly below.

SECTION 9.28 APPROVAL/APPEAL.

The building facade design shall be approved or denied by the UDO Administrator within fifteen (15) days of submittal to the UDO Administrator. Appeal of the UDO Administrator=s facade design decisions shall be made to the Planning Board by application submitted within forty-five (45) days of the UDO Administrator=s decision. The Planning Board shall act on the appeal at its next regularly scheduled meeting.

PART IV. SIGN REGULATIONS

SECTION 9.29 PERMIT REQUIRED FOR SIGNS.

9.29.1. Except as otherwise provided in Section 9.30 (Signs Not Requiring a Permit) and Section 9.31 (Certain Temporary Signs; Permit Exemptions and Additional Regulations), no sign may be erected, moved, enlarged, or substantially altered except in accordance with the provisions of this section. Mere repainting or changing the message of a sign shall not, in and of itself, be considered a substantial alteration. *(Amended 11/20/2017)*

9.29.2. If plans submitted for a zoning permit, special use permit, or conditional use permit include sign plans in sufficient detail that the permit-issuing authority can determine whether the proposed sign or signs comply with the provisions of this Ordinance, then issuance of the requested zoning, special use, or conditional use permit shall constitute approval of the proposed sign or signs.

9.29.3. Signs not approved as provided in subsection 9.29.2 or exempted under the provisions referenced in subsection 9.29.1 may be erected, moved, enlarged, or substantially altered only in accordance with a sign permit issued by the UDO Administrator. Sign permit applications and sign permits shall be governed by the same provisions of this Ordinance applicable to zoning permits.

9.29.4. All sign permits shall expire if not utilized within one hundred eighty (180) days following issuance. No more than one (1) off-premises sign permit per parcel may be issued within any three hundred sixty-five (365) day period, such time beginning with the date of issuance of any previous off-premises sign permit.

SECTION 9.30 SIGNS NOT REQUIRING A PERMIT. *(Amended 11/20/2017)*

The following signs are exempt from regulation under this Ordinance except for those restrictions stated in Sections 9.37.2 through 9.37.4.

9.30.1. Signs not exceeding four (4) square feet in area that are customarily associated with residential use and that are not of a commercial nature, such as (1) signs giving property identification names or numbers or names of occupants, (2) signs on mailboxes or paper tubes, and (3) signs posted on private property relating to private parking or warning the public against trespassing or danger from animals.

9.30.2. Signs erected by or on behalf of or pursuant to the authorization of a governmental body, including legal notices, identification and informational signs, and traffic, directional, or regulatory signs.

9.30.3. Official signs of a noncommercial nature erected by public utilities.

9.30.4. Flags, pennants, or insignia of any governmental or nonprofit organization when not displayed in connection with a commercial promotion of as an advertising device.

9.30.5. Integral decorative or architectural features of buildings or works of art, so long as such features or works do not contain letters, trademarks, moving parts, or lights.

9.30.6. Signs directing and guiding traffic on private property that do not exceed four (4) square feet each.

9.30.7. Signs painted on or otherwise permanently attached to currently licensed motor vehicles and trailers that are not primarily used as signs.

9.30.8. Non-commercial temporary signs not exceeding four (4) square feet in area, and three (3) feet in height if freestanding are allowed in all residential districts (see Section 9.34.1.4.).

9.30.9. Signs located on the interior of buildings, courts, lobbies, stadiums, or other structures that are not intended to be seen from the exterior of said building or structure.

9.30.10. Memorial plaques or markers.

9.30.11. Signs painted or attached to vending machines, gas pumps, ice machines, or similar devices which indicate the contents of the machine, the price, or operating instructions.

9.30.12. Window signs painted directly on or attached to a window.

9.30.13. Art, including murals and paintings.

9.30.14. Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. If construction is not completed at the end of 24 months from the time the fence wrap was installed, the city may regulate the signage but shall continue to allow fence wrapping materials to be affixed to the perimeter fencing. No fence wrap affixed pursuant to this subsection may display any advertising other than advertising sponsored by a person directly involved in the construction project and or which monetary compensation for the advertisement is not paid or required.

SECTION 9.31 DETERMINING THE NUMBER OF SIGNS.

9.31.1. For the purpose of determining the number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related, and composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, each element shall be considered a single sign.

9.31.2. Without limiting the generality of subsection 9.31.1, a multi-sided sign shall be regarded as one sign.

SECTION 9.32 COMPUTATION OF SIGN AREA.

9.32.1. The surface area of a sign shall be computed by including the entire area within a single, continuous, rectilinear perimeter of not more than eight (8) straight lines or a circle or an ellipse enclosing the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework or bracing that is clearly incidental to the display itself.

9.32.2. If the sign consists of more than one section or module, all of the area, including that between sections or modules, shall be included in the computation of the sign area.

9.32.3. With respect to two-sided, multisided or three-dimensional signs, the surface area shall be computed by including the total of all sides designed either to attract attention or communicate information that can be seen at one time by any person from any vantage point. For example, with respect to a typical two-sided sign where a message is printed on both sides of a flat surface, the sign surface area of one side (rather than the sum total of both sides) shall be regarded as the total sign surface area of that sign, since one can see only one side of the sign from any vantage point.

9.32.4. With respect to V-shaped signs, the surface area shall be calculated as in subsection 9.32.3 above, provided the angle of the intersecting sign planes does not exceed ninety (90) degrees. If the angle of the intersecting sign planes exceeds ninety (90) degrees, sign area shall be computed as it would for a one-sided sign.

SECTION 9.33 DISTRICT SIGNS.

9.33.1. Signs in General Residential Districts.

9.33.1.1. Unless otherwise provided in this article or in Article 7, Supplemental Regulations, the maximum sign surface area permitted on any lot in any RA-20, RA-15, RA-12, RA-8, RA-7, RA-6, and RA-5 residential district is four (4) square feet, including home occupations. Home occupation signage shall be permanently fixed to the residence within which the home occupation resides. *(Amended 11/20/2017)*

9.33.1.2. At any entrance to a residential subdivision, multi-family development, or manufactured home park, there may be not more than two (2) signs identifying such subdivision or development. A single side of any such sign may not exceed thirty-two (32) square feet nor may the total surface area of all such signs located at a single entrance exceed sixty-four (64) square feet.

9.33.1.3. LED lighting is prohibited for churches located in residential zoning districts.

9.33.1.4. Temporary signs not exceeding four (4) square feet in area, and three (3) feet in height if freestanding are allowed in all residential districts. The number of these signs is limited to one (1) per one hundred (100) feet, or fraction thereof, of lot frontage of all immediately adjacent public streets. In no event shall there be more than three (3) such signs allowed per lot. The temporary sign may be displayed up to three (3) days prior to and/or following the specific event within which the sign is associated. No temporary signs are allowed in the public right-of-way. *(Amended 11/20/2017)*

9.33.2. Signs in RO and O&I Districts. *(Amended 11/20/2017)*

Permitted Sign Type(s)	Specific Applicability	Maximum Sign Surface Area	Maximum Height	Maximum Number
BUILDING MOUNTED				
Wall	Per building entrance	Not to exceed 50 square feet	N/A	1
Window	Per separate business establishment	25% of first floor total building front facade window and/or door area	N/A	N/A
Projecting	Per separate business establishment	Not to exceed 10 square feet and may not project more than 5 feet from the building wall[1]	N/A	1
Canopy or Awning	Each entrance per building	Copy area of the sign is limited to the drip flap; logos may be placed on the awning itself	N/A	1
ID Plaques	Identifies tenants in building	4 square feet	N/A	1

Permitted Sign Type(s)	Specific Applicability	Maximum Sign Surface Area	Maximum Height	Maximum Number
FREESTANDING				
Monument or Ground Mounted[2]	Per street frontage	Not to exceed 50 square feet	15 ft	1
Freestanding	Per premise	Not to exceed 60 square feet	30 ft	1
Temporary[3]	Message neutral	8 square feet	6 ft	[4]

[1]Bottom edge of sign must be at least 10 feet above the sidewalk; except in cases where sign is located underneath an awning or canopy, the bottom edge shall be at least 8 feet above the sidewalk. Projecting signs will not extend vertically above the roofline or parapet of a building.

[2]Sign shall be located no closer than 10' from property line or street right-of-way.

[3]Temporary signs may be displayed up to ten (10) days prior to and/or following the specific event with which the sign is associated. No temporary signs are allowed in the public right-of-way.

[4]The number of signs is limited to one (1) per 100 feet, or fraction thereof, of lot frontage of all immediately adjacent public streets.

9.33.3. Signs in B-2 Districts. *(Amended 11/20/2017)*

Permitted Sign Type(s)	Specific Applicability	Maximum Sign Surface Area	Maximum Height	Maximum Number
BUILDING MOUNTED				
Wall	Per building entrance	Not to exceed a total of 100 square feet	N/A	2
Window	Per separate business establishment	25% of first floor total building front facade window and/or door area	N/A	N/A
Projecting	Per separate business establishment	May not project more than 5 feet from the building wall.[1]	N/A	1
Canopy or Awning	Each entrance per premises	Copy area of the sign is limited to the drip flap; logos may be placed on the awning itself	N/A	1
ID Plaques	Identifies tenants in building	4 square feet	N/A	1
FREESTANDING				
Monument or Ground Mounted[2]	Per street frontage	Not to exceed 30 square feet	25 ft	1
Freestanding	Per premise	Not to exceed 60 square feet	30 ft	1
Temporary[3]	Message neutral	8 square feet	6 ft	[4]

[1]Bottom edge of sign must be at least 10 feet above the sidewalk; except in cases where sign is located underneath an awning or canopy, the bottom edge shall be at least 8 feet above the sidewalk. Projecting signs will not extend vertically above the roofline or parapet of the building.

[2]Sign shall be located no closer than 10' from property line or street right-of-way.

[3]Temporary signs may be displayed up to ten (10) days prior to and/or following the specific event with which the sign is associated. No temporary signs are allowed in the public right-of-way.

[4]The number of signs is limited to one (1) per 100 feet, or fraction thereof, of lot frontage of all immediately adjacent public streets.

9.33.4. Signs in B-1, SC, I-B, I-1 and I-2 Districts. *(Amended 11/20/2017)*

Permitted Sign Type(s)	Specific Applicability	Maximum Sign Surface Area	Maximum Height	Maximum Number
BUILDING MOUNTED				
Wall[1]	Front facades	1 sq ft for each linear foot of wall frontage or 5% of wall whichever is greater	N/A	N/A
Wall[1]	Secondary to primary signage	. sq ft for each linear foot of building wall facing side street	N/A	N/A
Window	Per separate business establishment	25% of first floor total building front facade window and/or door area	N/A	N/A
Projecting	Per separate business establishment	May not project more than 5 feet from the building wall.[2]	N/A	1
Canopy or Awning	Per premises	Copy area of the sign is limited to the drip flap; logos may be placed on the awning itself	N/A	1
ID Plaques	Identifies tenants in building	4 square feet	N/A	1
FREESTANDING				
Monument or Ground Mounted[3]	Street frontage of lot is 200 or less feet	Not to exceed 200 square feet	25 ft	1
Monument or Ground Mounted[3]	Street frontage of lot is 201 to 500 feet	Not to exceed 200 square feet	25 ft	2
Monument or Ground Mounted[3]	Street frontage of lot is greater than 500 feet	Not to exceed 200 square feet	25 ft	3
Temporary[4]	Message neutral	8 square feet	6 ft	[5]

[1]Wall signs may project a maximum of 12" from the wall to which it is mounted.

[2]Bottom edge of sign must be at least 10 feet above the sidewalk; except in cases where sign is located underneath an awning or canopy, the bottom edge shall be at least 8 feet above the sidewalk. Projecting signs will not extend vertically above the roofline or parapet of the building.

[3]Sign shall be located no closer than 10' from property line or street right-of-way.

[4]Temporary signs may be displayed up to ten (10) days prior to and/or following the specific event with which the sign is associated. No temporary signs are allowed in the public right-of-way.

[5]The number of signs is limited to one (1) per 100 feet, or fraction thereof, of lot frontage of all immediately adjacent public streets.

9.33.5. Off-Premise Signs.

Permitted Sign Type(s)	Specific Applicability	Maximum Sign Surface Area	Maximum Height	Maximum Number
FREESTANDING				
Off-premise signs (outdoor advertising)[1, 2, 3]	May not be located in any district other than a B-1, I-B, I-1, or I-2 districts	Not to exceed a maximum total of 378 feet, per side[4]	30 ft	N/A

[1]Sign shall be located no closer than one thousand (1,000) feet from another off-premises sign on the same side of the street. An off-premises sign shall not be located less than five hundred (500) feet from any other off-premises sign as measured in a straight line. Off-premises signs shall not extend closer than the minimum building setback for the district in which located as specified in Section 6.6 and 6.7.3.

[2]Off-premise signs shall not be located within two hundred (200) feet of any property which is used for public parks, public or private schools, churches, public museums, city hall, or courthouse and which has principal access on the same street as the off-premises sign. No off-premises sign shall be located closer than one hundred (100) feet of a lot on the same side of the street which is zoned or developed for residential purposes.

[3] The City of Kinston will pay just compensation in accordance with NCGS 136-131.1 for required removal of billboards.

[4]An additional fifteen (15) percent of the sign area may be permitted outside the sign face for enlargement for a specific display or copy.

9.33.6. Sign Measurement.

Measurement shall be taken from the center line of the adjacent street for freestanding signs and the ground for all other signs.

SECTION 9.34 SUPPLEMENTAL SIGN STANDARDS FOR THE O/I, B-1, B-2, AND SC DISTRICTS.

(Amended 11/20/2017)

Sign standards for specific business operations are in addition to the general standards outlined in this Article and recognize the different types of traffic, use and need of signs for the assistance of the traveling public and the prosperity of business owners and employees through the attraction, retention, and furtherance of commerce throughout the City. Establishments in the four listed zoning districts may avail themselves of the maximum signage allowable under Section 9.33 and additionally may supplement such maximum via the standards of this subsection.

9.34.1. Sandwich Board Sign.

Limited to one sign per business. Signs shall be limited to a maximum height of four (4) feet and a maximum length of three (3) feet. Folding and double-faced signs shall be considered one (1) sign. Sandwich board signs shall not be located on any public right-of-way, except that where the edge of the right-of-way is the face of the building and where such building abuts a public sidewalk, such signage may be allowed as a right-of-way encroachment. Sign placement shall not impede movement on the sidewalk. Restaurants and food service establishments may have two (2) sandwich board signs.

9.34.2. Banners.

Limited to one banner per business. Banners shall be limited to a maximum height of six (6) feet and a maximum length of ten (10) feet. Banners shall contain the imprint or logo of the business in which the banner is intended. No additional logos, joint advertising or insignia shall be permitted.

9.34.3. Feather Flags.

Limited to two flags per business, but no more than six (6) flags at one time per approved major or minor site plan. Size limited to ten (10) feet in height and no greater than four (4) feet in width and, on a temporary basis, shall be permitted and may contain the imprint or logo of the business in which the flag is intended. In a Planned Residential Development, the location of flags are limited to the premises of the business or in a common pedestrian ingress area immediately in-front or adjacent to the primary pedestrian entrance of any business, in no case shall the flag be placed further than ten (10) feet from said primary pedestrian entrance. No flag shall be placed in the vehicular zone including parking areas, driveways, or vehicular ways. Placement of flags shall not impede ingress/egress to any building.

9.34.4. Sale/Event/Holiday Signs.

For no more than thirty (30) days annually, special signage for sales/events/holidays may be placed by a business on premises with the issuance of a permit. Such signs shall be of one of the categories above with the following supplemental standard: for each item in this subsection, the quantity of signs shall double.

SECTION 9.35 LOCATION REQUIREMENTS.

9.35.1. No sign may extend above any parapet or be placed upon any roof surface; except that, for purposes of this section, roof surfaces constructed at an angle of seventy-five (75) degrees or more from horizontal shall be regarded as wall space. This subsection shall not apply to displays, including lighting, erected in connection with the observation of holidays on the roofs of residential structures.

9.35.2. No sign or supporting structure may be located in or over the traveled portion of any public right-of-way unless the sign is attached to a structural element of a building and an encroachment permit has been obtained from the city.

9.35.3. No wall sign attached flat to a building may project more than eighteen (18) inches from the building wall. Projecting signs may, however, exceed the eighteen-inch requirement.

SECTION 9.36 SIGN ILLUMINATION AND SIGNS CONTAINING LIGHTS.

9.36.1. Unless otherwise prohibited by this article, signs may be illuminated if such illumination is in accordance with this section.

9.36.2. No sign within one hundred fifty (150) feet of a residential zone may be illuminated between the hours of 12:00 midnight and 6:00 a.m., unless the impact of such lighting beyond the boundaries of the lot where it is located is entirely inconsequential.

9.36.3. Lighting directed toward a sign shall be shielded so that it illuminates only the face of the sign and does not shine directly into a public right-of-way or residential premises.

9.36.4. Subject to subsection 9.36.5, no sign may contain or be illuminated by flashing or intermittent lights or lights of changing degrees of intensity, except signs indicating the time, date, or weather conditions.

9.36.5. Subsection 9.36.4 does not apply to temporary signs erected in connection with the observance of holidays or time and temperature signs.

SECTION 9.37 MISCELLANEOUS RESTRICTIONS AND PROHIBITIONS.

9.37.1. No temporary nor permanent sign (snipe signs) shall be attached to a tree or utility pole (other than signs allowed by Section 9.30.2).

9.37.2. No sign may be located so that it substantially interferes with the view necessary for motorists to proceed safely through intersections or to enter onto or exit from public streets or private roads. Specifically, no sign shall create a visual obstruction in a designated sight clearance area.

9.37.3. No sign may be erected so that by its location, color, size, shape, nature or message it would tend to obstruct the view of or be confused with official traffic signs or other signs erected by governmental agencies.

9.37.4. Freestanding signs shall be securely fastened to the ground or to some other substantial supportive structure so that there is virtually no danger that either the sign or the supportive structure may be moved by the wind or other forces of nature and cause injury to persons or property.

9.37.5. Canopy signs are permitted when suspended or attached to the underside of a canopy provided such signs shall be located so that the bottom edge of the sign is at least eight (8) feet above the sidewalk.

9.37.6. Any sign that revolves, changes copy, or is otherwise animated, or that utilizes movement or apparent movement to attract the attention of the public is prohibited. This prohibition shall be limited to, propellers, discs, banners, pennants, and streamers.

9.37.7. All portable signs are prohibited. This prohibition shall not apply to signs erected by or pursuant to the authorization of the City of Kinston for events of a community nature including but not limited to emergencies or for other governmental purposes. This prohibition shall not apply to signs placed upon vehicles that are operational and which are not parked at one location for over twenty-four (24) hours.

9.37.8. Vehicle Sign. Any sign that is attached to, painted on, or pulled by any vehicle that is parked on any street or in any parking space for the primary purpose of advertising.

9.37.9. No signs shall overhang or be erected in any public right-of-way. Traffic regulation, information or warning signs erected by the State Department of Transportation or signs erected by the town are exempt.

9.37.10. All message board signs are prohibited. This prohibition does not include menu and sandwich board signs.

9.37.11. All inflatable signs, balloons, and similar decorations are prohibited.

9.37.12. All roof signs are prohibited.

9.37.13. Any illuminated tubing or strings of lights outlining property lines, festoon lighting, open sales areas, rooflines, doors, windows, edges of walls, trees, or other landscaping are prohibited. This prohibition shall not apply to temporary holiday lighting; such temporary lighting shall be removed by the owner or tenant within a reasonable time following the end of the holiday.

9.37.14. Any sign that exhibits statements, words, or pictures of an indecent, obscene, or pornographic nature is prohibited.

9.37.15. Any sign that obstructs or interferes with any window, door, sidewalk, or fire escape is prohibited.

9.37.16. All beacons and spotlights are prohibited. Illumination system(s) shall not contain or utilize any beacon, spot, search, or stroboscopic light or reflector which is visible from any public right-of-way or adjacent property, nor shall such lights be operated outside, under any circumstances, except by authorized agencies for emergency services purposes.

9.37.17. Flood lights shall not be utilized as a part of a sign illumination system which are not hooded or shielded so that the light source is not visible from any public right-of-way or adjacent property nor shall any sign otherwise reflect or emit a glaring light so as to impair driver vision.

9.37.18. Any sign or sign structure that is structurally unsafe as determined by the UDO Administrator or Building Inspector is prohibited.

9.37.19. Any sign that incorporates a computer screen, electronic images, or electronic characters or flashing lights is prohibited. This prohibition shall not apply to digital menu receipt boards and signage used to indicate time, temperature, or fuel prices.

9.37.20. Stacking signs on top of one another is prohibited.

9.37.21. Signs painted on or attached to trees, fences, or fence posts, and telephone or utility poles or signs on or attached to rocks or other natural features are prohibited. Any commercial identification or advertising signs on benches or refuse containers are also prohibited.

9.37.22. Pavement markings are prohibited except those of a customary traffic-control nature.

9.37.23. Any sign located or designated so as to intentionally or effectively deny an adjoining property owner reasonable visual access to an existing sign is prohibited.

SECTION 9.38 GENERAL MAINTENANCE REQUIREMENTS.

To ensure that signs are erected and maintained in a safe and attractive condition, the following maintenance requirements shall apply to all signs:

9.38.1. Every sign and its supports, braces, guys, anchors, and electrical equipment shall be maintained in safe condition at all times. All signs shall be kept free from defective or missing parts or peeling paint and shall be sufficiently stabilized to withstand wind damage.

9.38.2. A sign shall have no more than ten (10) percent of its surface area covered with disfigured, cracked, ripped, or peeling paint, poster paper, or other material for a period more than fourteen (14) successive days.

9.38.3. A sign shall not have weeds, vines, or other vegetation growing upon it, or obscuring the view of the sign from the street or right-of-way from which it is to be viewed, for a period of more than fifteen (15) successive days.

9.38.4. An illuminated sign shall not have only partial illumination for a period of more than fifteen (15) successive days.

9.38.5. Should any sign become insecure or in danger of falling or otherwise unsafe in the opinion of the UDO Administrator, the owner thereof, or the person or firm maintaining the sign, shall, upon written notice from the UDO Administrator, forthwith in the case of immediate danger and in any case within ten (10) days, secure the sign in a manner to be approved by the UDO Administrator, in conformity with the provisions of this section or remove the sign. If the order is not complied with within ten (10) days, the UDO Administrator shall remove the sign at the expense of the owner or lessee thereof.

SECTION 9.39 RECONSTRUCTION OF DAMAGED SIGNS OR SIGN STRUCTURES.

9.39.1. Any conforming or permitted nonconforming sign or sign structure which has been damaged may be repaired and used as before, provided all repairs are initiated within thirty (30) days and completed within sixty (60) days of such damage. However, if the sign should be declared unsafe by the UDO Administrator, the owner of the sign or the owner of record of the real property whereon the sign is located, shall immediately correct all unsafe conditions in a manner satisfactory to the UDO Administrator.

9.39.2. For the purposes of this Section, a nonconforming sign or its structure shall be considered destroyed, and therefore not repairable, if it receives damage to the extent of more than 50% of its value as listed for tax purposes by the Lenoir County Tax Office.

SECTION 9.40 NONCONFORMING SIGNS.

Nonconforming signs are subject to the provisions of Article 8, specifically Section 8.7.

SECTION 9.41 DISCONTINUED SIGNS.

Upon the discontinuance of a business or occupancy of an establishment for a consecutive period of one hundred eighty (180) days, the UDO Administrator shall require the removal of the on-premises sign(s) advertising or identifying the establishment. The UDO Administrator shall give thirty (30) days' notice to the property owner to remove the sign(s). Failure to remove the sign(s) within the thirty-day period shall constitute a violation of this article and shall be remedied in accordance with the provisions of Section 1.5.

PART V. SUBDIVISION REGULATIONS

SECTION 9.42 NO SUBDIVISION WITHOUT PLAT APPROVAL.

9.42.1. As provided in GS 160A-375, no person may subdivide his land except in accordance with all of the provisions of this Ordinance. In particular, no person may subdivide his land unless and until a final plat of the subdivision has been approved in accordance with the provisions of Section 5.3 and 5.4 and recorded in the Lenoir County Registry.

9.42.2. As provided in GS 160A-373, the Lenoir County Register of Deeds may not record a plat of any subdivision within the city's planning jurisdiction unless the plat has been approved in accordance with the provisions of this Ordinance.

SECTION 9.43 STANDARDS FOR REVIEW.

Refer to Section 5.7 for the subdivision review process. Decision on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in Article 9, Part V. Whenever the ordinance criteria for decisions requires application of judgement, those criteria must provide adequate guiding standards for the entity charged with plat approval.

SECTION 9.44 SKETCH PLANS.

A sketch plan is required and shall include the information specified in Section 5.2.3.

SECTION 9.45 PRELIMINARY PLATS FOR MINOR AND MAJOR SUBDIVISIONS.

The preliminary plat shall depict or contain the information provided in Section 9.47. Preliminary plats shall be clearly and legibly drawn at a scale of not less than two hundred (200) feet to one (1) inch.

SECTION 9.46 FINAL PLATS FOR ALL SUBDIVISIONS.

9.46.1. Final Plat Contents.

The final plats shall depict or contain the information provided in Section 9.47. Final plats shall be clearly and legibly drawn by a registered land surveyor currently licensed in the State of North Carolina by the NC State Board of Registration for Professional Engineers and Land Surveyors. The plat shall also be drawn at a scale of not less than two hundred (200) feet to one (1) inch and shall be drawn on a sheet size of mylar acceptable to the Register of Deeds of Lenoir County.

9.46.2. Certifications.

The final plat shall contain the certifications outlined in Section 9.48.

SECTION 9.47 INFORMATION TO BE PROVIDED ON PRELIMINARY AND FINAL PLATS.

The preliminary and final plats shall depict or contain the information indicated in the following table. An X indicates that the information is required.

Information	*Preliminary Plat*	*Final Plat*
Vicinity map (6" W x 4" H) showing location of subdivision in relation to neighboring tracts, subdivision, roads, and waterways (to include streets and lots of adjacent developed or platted properties). Also include corporate limits, city boundaries, county lines if on or near subdivision tract.	X	X
Boundaries of tract and portion to be subdivided, including total acreage to be subdivided, distinctly and accurately represented with all bearings and distances shown.	X	X
The owner's name(s) of adjoining properties and zoning classification of the parcel and of adjacent properties within 100 feet.	X	X
Proposed street layout and right-of-way width, lot layout and size of each lot. Number lots consecutively throughout the subdivision.	X	X
Name of proposed subdivision.	X	X
Statement from the County Health Department that a copy of the sketch plan has been submitted to them, if septic tanks or other onsite water or wastewater systems are to be used in the subdivision, AND/OR statement from the County Public Utilities that application has been made for public water and/or sewer permits.	X	X
Graphic scale.	X	X
North arrow and orientation.	X	X
Concurrent with submission of the Preliminary Plat to the city, the subdivider shall submit copies of the Preliminary Plat and any accompanying material to any other applicable agencies concerned with new development, including, but not limited to: District Highway Engineer, County Board of Education, U.S. Army Corps of Engineers, State Department of Natural Resources and Community Development, for review and recommendation	X	
List the proposed construction sequence.	X	
Proposed and existing topographic contours with intervals no greater than 2' intervals	X	X

Information	*Preliminary Plat*	*Final Plat*
Survey plat, date(s) survey was conducted and plat prepared, the name, address, phone number, registration number and seal of the Registered Land Surveyor		X
Names, addresses, and telephone numbers of all owners, mortgagees, land planners, architects, landscape architects and professional engineers responsible for the subdivision (include registration numbers and seals, when applicable).	X	X
Date of the drawing(s) and latest revision date(s).	X	X
State on plans any variance request(s)	X	
Show existing buildings or other structures, water courses, railroads, bridges, culverts, storm drains, both on the land to be subdivided and land immediately adjoining. Show wooded areas, swamps, rock outcrops, ponds or lakes, streams or stream beds and any other natural features affecting the site.	X	X
The exact location of the flood hazard, floodway and floodway fringe areas from the community•s FHBM or FIRM maps (FEMA). State the base flood elevation data for subdivision and the datum used.	X	X
Stormwater requirements, to include public drainage easements, riparian buffers, etc. NOTE: Site design must meet the city•s stormwater regulations	X	X
Show the minimum building setback lines for each lot.	X	X
Show pump station detail including any tower, if applicable.	X	X
The following data concerning proposed streets:		
Existing and proposed streets on adjoining properties and in the new subdivision.	X	X
Right-of-ways, locations, and dimensions	X	X
All existing and proposed grades	X	
Curbing pavement widths	X	
Typical street cross sections	X	
Street names	X	X
Traffic signage location and detail	X	
Design engineering data for all corners and curves	X	X

Information	*Preliminary Plat*	*Final Plat*
For office review; a complete site layout, including any future expansion anticipated; horizontal alignment indicating general curve data on site layout plan; vertical alignment indicated by percent grade, PI station and vertical curve length on site plan layout; the District Engineer may require the plotting of the ground profile and grade line for roads where special conditions or problems exist; typical section indicating the pavement design and width and the slopes, widths and details for either the curb and gutter or the shoulder and ditch proposed; drainage facilities and drainage areas.	X	
Street maintenance agreement in accordance with Section 9.76.	X	X
Type of street dedication; all streets must be designated either "public" or "private." (Where public streets are involved which will be dedicated to the city, the subdivider must submit all street plans to the Building Inspector for approval prior to preliminary plat approval). Where public streets are involved which will not be dedicated to the city, the subdivider shall submit all street plans to the State Department of Transportation District Highway Engineer.	X	X
Where streets are dedicated to the public, but not accepted into the city or state system before lots are sold, a statement explaining the status of the street in accordance with Section 9.76.	X	X
If any street is proposed to intersect with a state maintained road, the subdivider shall apply for driveway approval as required by the State Department of Transportation, Division of Highways' Manual on Driveway Regulations.	X	X
Evidence that the subdivider has applied for such approval.	X	X
Evidence that the subdivider has obtained such approval.	X	X
The location and dimensions of all:		
Utility and other easements.	X	X
Pedestrian and bicycle paths.	X	X
Areas to be dedicated to or reserved for public use.	X	X
The future ownership (dedication or reservation for public use to governmental body, for owners to duly constituted homeowners' association, or for tenants remaining in subdivider ownership) of recreation and open space lands.	X	X
The site/civil plans for utility layouts including:		
Sanitary sewers, invert elevations at manhole (include profiles).	X	
Storm sewers, invert elevations at manhole (include profiles).	X	
Other drainage facilities, if any	X	
Water distribution lines.	X	

Information	*Preliminary Plat*	*Final Plat*
Gas lines	X	
Telephone lines	X	
Electric lines	X	
These plans must illustrate connections from the proposed houses to the existing systems, showing line sizes, the location of fire hydrants, blow offs, manholes, force mains, and gate valves.	X	
Plans for individual water supply and sewage disposal systems, if any.	X	
Provide site calculations including:		
Acreage in buffering/recreation/open space requirements.	X	X
Linear feet in streets calculated to acreage.	X	X
Net buildable area calculated in acreage.	X	X
The name and location of any property or buildings within the proposed subdivision or within any contiguous property that is located on the US Department of Interior's National Register of Historic Places.	X	X
Sufficient engineering data to determine readily and reproduce on the ground every straight or curved line, street line, lot line, right-of-way line, easement line, and setback line, including dimensions, bearings, or deflection angles, radii, central angles and tangent distance for the center line of curved property lines that is not the boundary line of curved streets. All dimensions shall be measured to the nearest one-tenth of a foot and all angles to the nearest minute.	X	X
The accurate locations and descriptions of all monuments, markers, and control points.	X	X
A copy of any proposed deed restrictions or similar covenants. Such restrictions are mandatory when private recreation areas are established. Must include statement of compliance with state, local, and federal regulations.	X	X
All certifications required in Section 9.48.	X	X
Any other information considered by either the subdivider, Planning Board, or Board of Commissioners to be pertinent to the review of the plat.	X	X
Improvements guarantees (see Section 5.7.4.7).		X
Quality assurances signature below	X	X

Quality Assurance Signature, signifying that all Checklist items are enclosed with the submittal package. Return signed checklist with submittal.

_____ _____

Owner or Owner's Authorized Agent Date

SECTION 9.48 FINAL PLAT CERTIFICATIONS AND OTHER DOCUMENTATION.

9.48.1. Certificates for Minor Subdivision Final Plats.

9.48.1.1. Certificate of Ownership and Dedication. I hereby certify that I am (we are) the owner(s) of the property shown and described hereon, which property is within the subdivision regulation jurisdiction of the City of Kinston, and that I (we) freely adopt this plan of subdivision.

_____ _____

Owner(s) Date

9.48.1.2. Certificate of Approval for Recording Final Plat. I hereby certify that the minor subdivision shown on this plat does not involve the creation of new public streets or any change in existing public streets, that the subdivision shown is in all respects in compliance with the City of Kinston UDO, and that therefore this plat has been approved by the Kinston UDO Administrator, subject to its being recorded in the Lenoir County Registry within sixty (60) days of the date below.

_____ _____

UDO Administrator Date

9.48.1.3. Certificate of Survey and Accuracy. I, _____, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, page_____ etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book ___, page ___, that the ratio of precision as calculated is 1:___, that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this _____ day of _____A.D., 20___.

_____ Official Seal

Registered Land Surveyor

_____

Registration Number

The certificate of the notary shall read as follows:

North Carolina, _____ County. I, _____, a Notary Public of the County and State aforesaid, certify that _____, a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this _____ day of _____, 20___.

_____ Official Seal

Notary Public My Commission Expires: _____

9.48.2. Certificates for Major Subdivision Final Plats.

9.48.2.1. Certificate of Approval for Recording Final Plat. I hereby certify that all streets shown on this plat are within the City of Kinston's planning jurisdiction, all streets and other improvements shown on this plat have been installed or completed or that their installation or completion (within twelve (12) months after the date below) has been assured by the posting of a performance bond or other sufficient surety, and that the subdivision shown on this plat is in all respects in compliance with the City of Kinston UDO, and this plat has been approved by the Kinston UDO Administrator, subject to its being recorded in the Lenoir County Registry within sixty (60) days of the date below.

_____ _____

UDO Administrator Date

9.48.2.2. Certificate of Ownership and Dedication. I hereby certify that I am (we are) the owner(s) of the property shown and described hereon, which property is located within the subdivision regulation jurisdiction of the City of Kinston, that I hereby freely adopt this plan of subdivision and dedicate to public use all areas shown on this plat as streets, alleys, walks, parks, open space, and easements, except those specifically specified as private, and that I will maintain all such areas until the offer of dedication is accepted by the appropriate public authority. All property shown on this plat as dedicated for a public use shall be deemed to be dedicated for any other public use authorized by law when such other use is approved by the Kinston City Council in the public interest.

_____ _____

Owner(s) Date

9.48.2.3. Certificate of Survey and Accuracy. I, _____, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, page_____ etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book ___, page ___, that the ratio of precision as calculated is 1:___, that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this _____ day of _____A.D., 20___.

_____ Official Seal

Registered Land Surveyor

_____

Registration Number

The certificate of the notary shall read as follows:

North Carolina, _____ County. I, _____, a Notary Public of the County and State aforesaid, certify that _____, a registered land surveyor, personally appeared before me this day and acknowledged the execution of the

foregoing instrument. Witness my hand and official stamp or seal, this _____ day of _____, 20___.

_____ Official Seal

Notary Public My Commission Expires: _____

9.48.2.4. Division of Highways District Engineer Certificate. I hereby certify that the public streets shown on this plat have been completed, or that a performance bond or other sufficient surety has been posted to guarantee their completion, in accordance with at least the minimum specifications and standards of the State Department of Transportation for acceptance of subdivision streets on the state highway system for maintenance.

_____ _____

District Engineer Date

9.48.2.5. Private Streets Disclosure Statement. The maintenance of streets designated on this plat as ■Private• shall be the responsibility of property owners abutting such streets. Private streets as shown hereon were not constructed to the minimum standards required to allow their inclusion, for maintenance purposes, on the North Carolina highway system or on the City of Kinston street system. Neither the City of Kinston nor the North Carolina Department of Transportation will maintain any private street shown on this plat.

SECTION 9.49 PLAT APPROVAL NOT ACCEPTANCE OF DEDICATION OFFERS.

In accordance with Section 5.7.7, approval of a plat does not constitute acceptance by the city of the offer of dedication of any streets, sidewalks, parks, or other facilities shown on a plat. However, the city may accept any such offer of dedication by resolution of the City Council or by actually exercising control over and maintaining such facilities.

SECTION 9.50 PROTECTION AGAINST DEFECTS.

9.50.1. Whenever occupancy, use, or sale is allowed before the completion of all facilities or improvements intended for dedication, then the performance bond or the surety posted pursuant to Section 5.7.4.7 shall guarantee that any defects in such improvements or facilities which appear within one (1) year after the dedication of such facilities or improvements is accepted shall be corrected by the developer.

9.50.2. Whenever all public facilities or improvements intended for dedication are installed before occupancy, use, or sale is authorized, then the developer shall post a performance bond or other sufficient surety to guarantee that he will correct all defects in such facilities or improvements which occur within one (1) year after the offer of dedication of such facilities or improvements is accepted.

9.50.3. An architect or engineer retained by the developer shall certify to the city that all facilities and improvements to be dedicated to the city have been constructed in accordance with the requirements of this Ordinance. This certification shall be a condition precedent to acceptance by the city of the offer of dedication of such facilities or improvements.

9.50.4. For purposes of this section, the term ■defects• refers to any condition in publicly dedicated facilities or improvements that requires the city to make repairs in such facilities over and above the normal maintenance that they would require. If such defects appear, the guaranty may be enforced regardless of whether the facilities or improvements were constructed in accordance with the requirements of this Ordinance.

SECTION 9.51 MAINTENANCE OF COMMON AREAS, IMPROVEMENTS, AND FACILITIES

9.51.1. Any applicant for subdivision approval, or his successor, shall be responsible for maintaining all common areas, improvements, or facilities required by this Ordinance or any permit issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

9.51.2. As provided in Section 9.51.1, all facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer of dedication is accepted by the appropriate public authority.

SECTION 9.52 CLUSTER SUBDIVISIONS.

9.52.1. In any single-family residential subdivision in the zones indicated below, a developer may create lots that are smaller that those required by Section 6.6 if such developer complies with the provisions of this section and if the lots so created are not smaller than the minimums set forth in the following table:

Zoning District	Minimum Square Feet
RA-15	11,250
RA-8	6,000
RA-6, RA-5	4,500

9.52.2. The intent of this section is to authorize the developer to decrease lot sizes and leave the land ■saved• by so doing as usable open space, thereby lowering development costs and increasing the amenity of the project without increasing the density beyond what would be permissible if the land were subdivided into the size of lots required by Section 6.6.

9.52.3. The amount of usable open space that must be set aside shall be determined by:

9.52.3.1. Subtracting from the standard square footage requirement set forth in Section 6.6 the amount of square footage of each lot that is smaller than that standard;

9.52.3.2. Adding together the results obtained in subsection 9.52.3.1 above for each lot.

9.52.4. The provisions of this section may only be used if the usable open space set aside in a subdivision comprises at least ten thousand (10,000) square feet of space that satisfies the definition of usable open space set forth in Section 9.53 and if such usable open space is otherwise in compliance with the provisions of Part VI.

9.52.5. The building setback requirements delineated in the table below shall apply in cluster subdivisions:

District	Minimum Distance from Front Street Right-of-Way	Minimum Distance from Street Side Right-of-Way	Minimum Distance from Side Lot Boundary Line	Minimum Distance from Rear Lot Boundary Line
RA-15 Residential District	40 ft	30 ft	12 ft	25 ft
RA-8 Residential District	30 ft	30 ft	8 ft	20 ft
RA-6 Residential District	20 ft	20 ft	6 ft	20 ft

PART VI. RECREATIONAL FACILITIES AND OPEN SPACE

SECTION 9.53 USEABLE OPEN SPACE.

9.53.1. Every multi-family residential and manufactured home park development shall be developed so that at least five (5) percent of the total area of the development remains permanently as usable open space.

9.53.2. For purposes of this section, usable open space means an area that:

9.53.2.1. Is not encumbered with any substantial structure;

9.53.2.2. Is not devoted to use as a roadway, parking area, or sidewalk;

9.53.2.3. Is left in its natural or undisturbed state (as of the date development began), if wooded, except for the cutting of trails for walking or jogging, or, if not wooded at the time of development, is landscaped for ballfields, picnic areas, or similar facilities, or is properly vegetated and landscaped with the objective of creating a wooded area or other area that is consistent with the objective set forth in subsection 9.53.2.4;

9.53.2.4. Is capable of being used and enjoyed for purposes of informal and unstructured recreation and relaxation; and

9.53.2.5. Is legally and practicably accessible to the residents of the development out of which the required open space is taken, or to the public if dedication of the open space is required pursuant to Section 9.55.

9.53.2.6. Consists of land no more than twenty-five (25) percent of which lies within an area of special flood hazard or a floodway as those terms are defined in Appendix A.

SECTION 9.54 OWNERSHIP AND MAINTENANCE OF RECREATIONAL AREAS AND REQUIRED OPEN SPACE.

9.54.1. Except as provided in Section 9.55, recreation facilities and usable open space required to be provided by the developer in accordance with this article shall not be dedicated to the public but shall remain under the ownership and control of the developer (or his successor) or a homeowners' association or similar organization that satisfies the criteria established in Section 9.58.

9.54.2. The person or entity identified in subsection 9.54.1. as having the right of ownership and control over such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.

SECTION 9.55 DEDICATION OF OPEN SPACE.

9.55.1. If any portion of any lot proposed for multi-family residential or manufactured home park development lies within an area designated on the officially adopted recreation master plan as a neighborhood park or part of the greenway system or bikeway system, the area so designated (not exceeding five (5) percent of the total lot area) shall be included as part of the area set aside to satisfy the requirement of Section 9.53. This area shall be dedicated to public use.

9.55.2. If more than five (5) percent of a lot proposed for multi-family residential or manufactured home park development lies within an area designated as provided in subsection 9.55.1, the city may attempt to acquire the additional land in the following manner:

> ***9.55.2.1.*** The developer may utilize the procedures authorized in Section 9.52 (Cluster Subdivisions) and to dedicate the common open space thereby created; or
>
> ***9.55.2.2.*** The city may purchase or condemn the land.

9.55.3. An executed general warranty deed conveying the dedicated land to the City of Kinston shall be submitted to the city within thirty (30) working days of the approval by the City Council of a development plan.

SECTION 9.56 PAYMENTS IN LIEU OF DEDICATION.

9.56.1. Any developer required to dedicate land pursuant to this article, with the approval of the City Council, may make a payment in lieu of such dedication or may make combination dedication and partial payment in lieu of dedication, whichever, in the opinion of the City Council, shall be in the best interest of the citizens of the area to be served.

9.56.2. Any such payment in lieu of dedication shall be the product of the number of acres to be dedicated multiplied by the average fair market value of the land being subdivided at the time of the submission of the final development plan.

9.56.3. In case of a disagreement between the city and the developer as to the fair market value, such determination shall be made by a special appraisal committee made up of one (1) professional appraiser appointed by the city manager, one (1) professional appraiser appointed by the developer, and one (1) professional appraiser appointed by the initial two (2) committee

appointees. The committee shall view the land and hear the contentions of both the city and the developer. The findings of the committee shall be by a majority vote and shall be certified to the City Council in writing within thirty (30) days of the time of appointment of the third member of the committee. The costs of all professional land appraisers shall be borne entirely by the developer. (A professional appraiser is an individual who can show by legal credentials and experience that he or she has a knowledge of land appraisals of a similar type.)

9.56.4. All monies received by the city pursuant to this section shall be used only for the acquisition or development of recreational and park sites benefitting the new development and the residents in the vicinity of the development.

SECTION 9.57 PROCEDURE FOR REQUESTING PAYMENT IN LIEU OF DEDICATION OF LAND.

9.57.1. The developer shall attach to the preliminary development plan a letter requesting approval to make payment in lieu of dedication of land pursuant to this article. In this letter, the developer shall state the proposed per-acre value and include, in writing, the basis for determination of this value.

9.57.2. Upon receipt of the preliminary development plan, the UDO Administrator shall submit a copy thereof with attached letter requesting approval to make payment in lieu of dedication to the city manager at least twenty (20) working days prior to the City Council's next scheduled meeting. The city manager shall submit any and all recommendations concerning payment in lieu of dedication to the City Council at its next scheduled meeting following review by the city manager.

9.57.3. Upon approval by the City Council, payment in lieu of dedication shall be made within one (1) year of the approval of the final development plan, except as otherwise approved by the City Council.

SECTION 9.58 HOMEOWNERS♠ASSOCIATIONS.

Homeowners' associations or similar legal entities that, pursuant to Section 9.54, are responsible for the maintenance and control of common areas, including recreational facilities and open space, shall be established in such a manner that:

9.58.1. Provision for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;

9.58.2. The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas and facilities;

9.58.3. The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities.

SECTION 9.59 FLEXIBILITY IN ADMINISTRATION AUTHORIZED.

9.59.1. The requirements set forth in this article concerning the amount, size, location and nature of recreational facilities and open space to be provided in connection with multifamily residential and manufactured home park developments are established by the council as standards that presumptively will result in the provision of that amount of recreational facilities and open space that is consistent with officially adopted city plans. The council recognizes, however, that due to the particular nature of a tract of land, or the nature of the facilities proposed for installation, or other factors, the underlying objectives of this article may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the permit-issuing body is authorized to permit minor deviations from these standards whenever it determines that: (i) the objectives underlying these standards can be met without strict adherence to them; and (ii) because of peculiarities in the developer's tract of land or the facilities proposed it would be unreasonable to require strict adherence to these standards.

9.59.2. Whenever the permit-issuing board authorizes some deviation from the standards set forth in this article pursuant to subsection 9.48.1, the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

SECTION 9.60 AUTHORITY TO SELL.

The City Council shall have the authority to sell land dedicated pursuant to this article, with the proceeds of any such sale used solely for the acquisition and/or development of other recreation, park or open space sites.

SECTION 9.61 LAND ACCEPTANCE.

The City Council shall have the authority to accept or reject land dedications made as a requirement of this article. At the developer's request, the City Council may accept a land dedication located elsewhere in the city's jurisdiction in lieu of a land dedication at the site of the proposed development.

PART VII. STREETS AND SIDEWALKS

SECTION 9.62 STREET CLASSIFICATION.

9.62.1. In all new subdivisions, streets that are dedicated to public use shall be classified as provided in subsection 9.62.2.

> ***9.62.1.1.*** The classification shall be based upon the projected volume of traffic to be carried by the street, stated in terms of the number of trips per day;
>
> ***9.62.1.2.*** The number of dwelling units to be served by the street may be used as a useful indicator of the number of trips but is not conclusive;
>
> ***9.62.1.3.*** Whenever a subdivision street continues an existing street that formerly terminated outside the subdivision or it is expected that a subdivision street will be continued beyond the subdivision at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the subdivision.

9.62.2. The classification of streets shall be as follows: Minor, Local, Cul-De-Sac, Subcollector, Collector, Arterial, Marginal Access Street (see Appendix A for definitions).

SECTION 9.63 ACCESS TO LOTS.

Every lot shall have access to a street so as to afford a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the property in its intended use.

All lots shall front upon a public or approved private street, except as provided below, and shall conform with the minimum standards or dimensions contained herein. A maximum of three (3) subdivision lots may be allowed with frontage on a perpetual easement provided that:

9.63.1. The perpetual easement is not less than thirty (30) feet in width and connects to a public road;

9.63.2. Proof of the permanence of the easement is submitted prior to final plat approval;

9.63.3. Restrictive covenants prohibiting further resubdivision of the individual lots are recorded with the Lenoir County Register of Deeds prior to final plat approval; and

9.63.4. Each subdivision lot is zoned RA-20 or RA-15.

SECTION 9.64 ACCESS TO ARTERIAL STREETS.

Whenever a major subdivision that involves the creation of one (1) or more new streets borders on or contains an existing or proposed arterial street, no direct driveway access may be provided from the lots within this subdivision onto this street.

SECTION 9.65 STREET WIDTH, SIDEWALK, AND DRAINAGE REQUIREMENTS IN SUBDIVISIONS.

9.65.1. Street rights-of-way are designed and developed to serve several functions: (i) to carry motor vehicle traffic and, in some cases, allow on-street parking; (ii) to provide a safe and convenient passageway for pedestrian traffic; and (iii) to serve as an important link in the city's drainage system. In order to fulfill these objectives, all public streets shall be constructed to meet either the standards set forth in subsections 9.65.2 or 9.65.3.

9.65.2. All streets, except as provided in subsection 9.65.3, shall be constructed with curb and gutter as specified in the ■Kinston Public Services Infrastructure Design Manual• and shall conform to the other requirements of this subsection. Street pavement width shall be measured from back of curb to back of curb.

Type Street	Minimum Right-of-Way Width	Minimum Pavement Width
Minor	50 feet	26 feet
Local	50 feet	30 feet
Subcollector	60 feet	35 feet
Collector	60 feet	41 feet
Arterial: Minor Thoroughfare Major Thoroughfare	 80 feet 120 feet	 53 feet As determined by the City Engineer
Freeway	200 feet	As determined by the City Engineer
Marginal Access	50 feet	27 feet

The construction standards for streets within rights-of-way dedicated prior to the effective date of this ordinance shall be determined by the city engineer on a case-by-case basis.

9.65.3. The minor, local, and subcollector classifications of streets may be constructed with six-foot-wide shoulders and drainage swales on either side in lieu of curb and gutter so long as the street grade does not exceed the maximum grade specified in the City of Kinston "Manual for the Design and Construction of Water and Wastewater System Extensions and Street and Drainage Systems,• or the drainage characteristics do not exceed the velocities with the recommended vegetative covers of the latest edition of the "North Carolina Erosion and Sediment Control

Planning and Design Manual." The minimum right-of-way and pavement width of streets constructed without curb and gutter shall be as follows:

Type Street	Minimum Right-of-Way Width	Minimum Pavement Width
Minor	50 feet	18 feet
Local	60 feet	22 feet

9.65.4. The construction of sidewalks adjacent to one side of all new streets in subdivisions in which pedestrian traffic is projected to be heavy due to the proximity of schools, parks, open space, playgrounds, or other community or private facilities is required. The sidewalks required by this section shall be at least four (4) feet in width and constructed according to the specifications set forth in the City of Kinston "Manual for the Design and Construction of Water and Wastewater System Extensions and Street and Drainage Systems.• Additional right-of-way may be required by the City Council to accommodate sidewalks provided under this subsection.

9.65.5. Whenever the Planning Board finds that a means of pedestrian access is necessary to provide access to schools, parks, open space, playgrounds, or other roads or facilities and that such access is not conveniently provided by sidewalks adjacent to the streets, the developer may be required to reserve an unobstructed easement of at least ten feet in width to provide such access.

SECTION 9.66 GENERAL LAYOUT OF STREETS.

9.66.1. Marginal access, minor and collector residential streets shall be curved whenever practicable to the extent necessary to avoid conformity of lot appearance.

9.66.2. All permanent dead-end streets (as opposed to temporary dead-end streets) shall be developed as cul-de-sacs in accordance with the standards set forth in subsection 9.49.3. Except where no other practicable alternative is available, such streets shall be designed so as to provide access to no more than twenty (20) dwelling units or a maximum ADT of 200, whichever is greater. ADT is calculated according to the following trip generation rates:

Use	Generation Rate	Maximum Units
Single-Family	10.0	20
Apartment, Condominium	6.1	32
Manufactured Home	4.8	41
Retirement Community	3.3	60
Nonresidential	As determined by appropriate trip generation rates	

9.66.3. The right-of-way of a cul-de-sac turnaround shall have a radius of fifty (50) feet. The radius of the paved portion of the turnaround (measured to the outer edge of the pavement) shall be thirty-five (35) feet and the pavement width shall be twelve (12) feet without curb and gutter or eighteen (18) feet with curb and gutter. Any unpaved center of the turnaround area shall be landscaped.

9.66.4. Half streets (i.e., streets of less than the full required right-of-way and pavement width) will not be permitted except where such streets, when combined with a similar street (developed previously or simultaneously) on property adjacent to the subdivision, creates or comprises a street that meets the right-of-way and pavement requirements of the City of Kinston "Manual for the Design and Construction of Water and Wastewater System Extensions and Street and Drainage Systems.•

9.66.5. Streets shall be laid out so that residential blocks do not exceed one thousand feet (1,000), unless otherwise approved by the city engineer.

SECTION 9.67 STREET INTERSECTIONS.

9.67.1. Streets will intersect as nearly as possible at right angles and no two (2) streets will intersect at less than sixty (60) degrees. The most desirable intersections are those with angles of seventy-five (75) to ninety (90) degrees. Not more than two (2) streets will intersect at any one point unless otherwise approved by the city engineer.

9.67.2. Whenever possible, proposed intersections along one side of a street will coincide with existing or proposed intersections on the opposite side of such street. Otherwise, where a centerline offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall not be less than four hundred (400) feet.

9.67.3. Except as may be approved otherwise by the city engineer, no two (2) streets may intersect with any other street on the same side at a distance of less than four hundred feet (400) measured from centerline to centerline of the intersecting street. When the intersected street is an arterial, the distance between intersecting streets shall be at least one thousand (1,000) feet.

SECTION 9.68 CONSTRUCTION STANDARDS AND SPECIFICATIONS.

Construction and design standards and specifications for streets, sidewalks, and curbs and gutters are contained in the City of Kinston "Manual for the Design and Construction of Water and Wastewater System Extensions and Street and Drainage Systems," and all such facilities shall be completed in accordance with these standards.

SECTION 9.69 PRIVATE STREETS AND PRIVATE ROADS IN SUBDIVISIONS.

9.69.1. Except as otherwise provided in this section, all lots created after the effective date of this section shall abut a public street at least to the extent necessary to comply with the access requirement set forth in Section 9.63. For purposes of this subsection, the term `public street' includes a pre-existing public street as well as a street created by the subdivider that meets the public street standards of this chapter and is dedicated for public use. Unless the recorded plat of a subdivision clearly shows a street to be private, the recording of such a plat shall constitute an offer of dedication of such street.

9.69.2. Subdivisions may be developed with private roads so long as:

> ***9.69.2.1.*** The private roads are built to the same street construction standards and specifications as public streets.
>
> ***9.69.2.2.*** The proposed development will have direct access onto a public street or, if the tract has access to a public street only via a private road, such private road is improved to public street standards;
>
> ***9.69.2.3.*** No road intended to be private is planned to be extended to serve property outside of that development;
>
> ***9.69.2.4.*** The subdivider demonstrates to the reasonable satisfaction of the Planning Board that the private roads will be properly maintained by a property owners' association or similar maintenance procedure; and
>
> ***9.69.2.5.*** The standards applicable to unsubdivided developments set forth in Sections 9.60 and 9.61 are complied with.

9.69.3. No final plat that shows lots served by private roads may be recorded unless the final plat contains the following notations as well as the disclosure statement require in Section 9.48.2.5:

9.69.3.1. "Further subdivision of any lot shown on this plat as served by a private road is prohibited."

9.69.3.2. "The policy of the City of Kinston is that, if the city improves streets (i) that were never constructed to the standards required in the Kinston Unified Development Ordinance for dedicated streets, and (ii) on which seventy-five (75) percent of the dwelling units were constructed after the effective date of this chapter, then the costs of such improvements shall be assessed to abutting landowners in accordance with current City of Kinston policies."

9.69.3.3. "The maintenance of all private streets and roads shown on this plat shall be the responsibility of property owners of lots within this subdivision. The City of Kinston and the North Carolina Department of Transportation will not maintain any private street or road."

9.69.4. The recorded plat of any subdivision that includes a private road shall clearly state that such road is a private road. Further, the initial purchaser of a newly created lot served by a private road shall be furnished by the seller with a disclosure statement, in accordance with the provisions of G.S. 136-102.6, outlining the maintenance responsibilities for the road.

SECTION 9.70 ROAD AND SIDEWALK REQUIREMENTS IN UNSUBDIVIDED DEVELOPMENTS.

9.70.1. Within unsubdivided developments, all private roads and access ways shall be designed and constructed to facilitate the safe and convenient movement of motor vehicle and pedestrian traffic. Width of roads, use of curb and gutter, and paving specifications shall be determined by the provisions of the chapter dealing with parking (Article 9, Part III) and flood damage prevention (Article 9, Part IX). To the extent not otherwise covered in the foregoing articles, and to the extent that the requirements set forth in this article for subdivision streets may be relevant to the roads in unsubdivided developments, the requirements of this article may be applied to satisfy the standard set forth in the first sentence of this subsection.

9.70.2. Whenever a road in an unsubdivided development connects two (2) or more collector or arterial streets in such a manner that any substantial volume of through-traffic is likely to make use of this road, such road shall be constructed in accordance with the standards applicable to subdivision streets and shall be dedicated. In other cases when roads in unsubdivided developments within the city are constructed in accordance with the specifications for subdivision streets, the city may accept an offer of dedication of such streets.

9.70.3. In all unsubdivided residential developments, sidewalks shall be provided linking dwelling units with other dwelling units, the public street, and on-site activity centers such as parking areas, laundry facilities, and recreational areas and facilities. Notwithstanding the foregoing, sidewalks shall not be required where pedestrians have access to a road that serves not more than nine (9) dwelling units. The sidewalk requirement may also be waived where, in the opinion of the Planning Board, an adequate system of hiking and/or bicycling trails are provided which would offer acceptable pedestrian facilities and access.

9.70.4. Whenever the Planning Board finds that a means of pedestrian access is necessary from an unsubdivided development to schools, parks, playgrounds, or other roads or facilities and that such access is not conveniently provided by sidewalks adjacent to the roads, the developer may be required to reserve an unobstructed easement of at least ten (10) feet to provide such access.

9.70.5. The sidewalks required by this section shall be constructed according to the specifications set forth in the City of Kinston "Manual for the Design and Construction of Water and Wastewater System Extensions and Street and Drainage Systems.

SECTION 9.71 ATTENTION TO HANDICAPPED IN STREET AND SIDEWALK CONSTRUCTION.

9.71.1. As provided in G.S. 136-44.14, whenever curb and gutter construction is used on public streets, wheelchair ramps for the handicapped shall be provided as specified in the Kinston Public Services Infrastructure Design Manual. Wheelchair ramps and depressed curbs shall be constructed in accordance with published standards of the North Carolina Department of Transportation, Division of Highways.

9.71.2. In unsubdivided developments, sidewalk construction for the handicapped shall conform to the requirements of Section 11X of the North Carolina State Building Code, as amended.

SECTION 9.72 STREET NAMES AND HOUSE NUMBERS.

9.72.1. Street names shall be assigned by the developer subject to the approval of the Planning Board. Proposed streets that are obviously in alignment with existing streets shall be given the same name. Newly created streets shall be given names that neither duplicate nor are phonetically similar to existing streets within the city's planning jurisdiction, regardless of the use of different suffixes (such as those set forth in subsection 9.72.2.).

9.72.2. Street names shall include a suffix such as the following:

9.72.2.1. Circle. A short street that returns to itself.

9.72.2.2. Court or Place. A cul-de-sac or dead-end street.

9.72.2.3. Loop. A street that begins at the intersection with one street and circles back to end at another intersection with the same street.

9.72.2.4. Street, Avenue, Drive, Boulevard, and Other Common Suffixes Not Applying Above. All public streets not designated by another suffix.

9.72.3. Building numbers shall be assigned by the city staff. Building numbers shall be displayed in accordance with city policy concerning building numbers.

SECTION 9.73 BRIDGES.

All bridges shall be constructed in accordance with the standards and specifications of the North Carolina Department of Transportation, except that bridges on roads not intended for public dedication may be approved if designed by a registered, professional engineer.

SECTION 9.74 UTILITIES.

Utilities installed in public rights-of-way or along private roads shall conform to the requirements set forth in Article 9, Part VIII, Utilities.

SECTION 9.75 COST OF STREET AND SIDEWALK IMPROVEMENTS/MAINTENANCE UNTIL ACCEPTANCE.

The cost of installing street and sidewalk improvements required by this article shall be borne entirely by the developer. In no case shall the City of Kinston be responsible for the cost of street and sidewalk improvements required by this article. The developer shall be responsible for the maintenance of all facilities and improvements for which an offer of dedication to public use has been made until such offer of dedication is accepted by the appropriate public authority.

SECTION 9.76 STREET NAME AND TRAFFIC SIGNS.

Street name and traffic signs which meet standard City of Kinston and North Carolina Department of Transportation specifications shall be placed at all street intersections. The developer may purchase all street signs from the city. The city shall be responsible for the installation of all street

signs. In the case of a subdivision with private streets, street and traffic signs shall be constructed of a retro-reflective material and shall meet the size and location requirements of the "Manual of Uniform Traffic Control Devices."

SECTION 9.77 PERMITS FOR CONNECTION TO STATE ROADS.

An approved permit is required for connection to any existing state system road. This permit is required prior to any construction on the street or road. The application is available at the office of district engineer of the State Division of Highways (Highway Division 2, District 3).

SECTION 9.78 OFFSETS TO UTILITY POLES.

Poles for overhead utilities should be located clear of roadway shoulders, preferably at edge of rights-of-way on major thoroughfares. On streets with curb and gutter, utility should be set back a minimum distance of six (6) feet from the face of the curb.

SECTION 9.79 STREET CONNECTIVITY REQUIREMENTS.

9.79.1. An interconnected street system is necessary in order to protect the public health, safety, and welfare in order to ensure that streets will function in an interdependent manner, to provide adequate access for emergency and service vehicles, to enhance nonvehicular travel such as pedestrians and bicycles, and to provide continuous and comprehensible traffic routes. All proposed new streets shall be platted according to the current City Thoroughfare Plan. In areas where such plans have not been completed, the streets shall be designated and located in relation to existing and proposed streets, the topography, to natural features such as streams and tree cover, to public safety and convenience, and to the proposed use of land to be served by such streets.

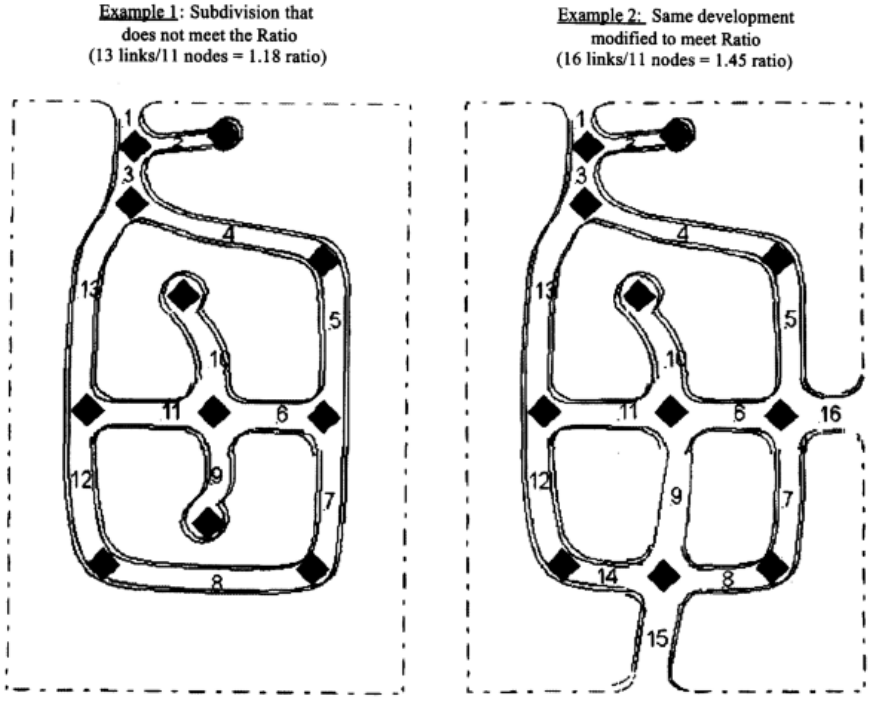
9.79.2. All proposed streets shall be continuous and connect to existing or platted streets without offset with the exception of cul-de-sacs as permitted and except as provided below. Whenever practicable, provisions shall be made for the continuation of planned streets into adjoining areas.

9.79.3. The street network for any subdivision shall achieve a connectivity ratio of not less than 1.45 (see example below). The phrase ■connectivity ratio• means the number of streets links divided by the number of nodes or link ends, including cul-de-sac heads. A ■link• means and refers to that portion of a street defined by a node at each end or at one end. Approved stubs to adjacent property shall be considered links. However, alleys shall not be considered links. A ■node• refers to the terminus of a street or the intersection of two or more streets, except that intersections that

use a roundabout shall not be counted as a node. For the purposes of this section, an intersection shall be defined as:

9.79.3.1. Any curve or bend of a street that fails to meet the minimum curve radius as established by the North Carolina Department of Transportation, Division of Highways design and minimum construction standards, or

9.79.3.2. Any location where street names change (as reviewed and approved by the UDO Administrator).



9.79.4. For the purposes of this section, the street links and nodes within the collector or thoroughfare streets providing access to a proposed subdivision shall not be considered in computing the connectivity ratio.

9.79.5. Residential streets shall be designed so as to minimize the length of local streets, to provide safe access to residences, and to maintain connectivity between and through residential neighborhoods for autos and pedestrians.

9.79.6. Where necessary to provide access or to permit the reasonable future subdivision of adjacent land, rights-of-way, and improvements shall be extended to the boundary of the development. A temporary turnaround may be required where the dead end exceeds 500 feet in length. The platting of partial width rights-of-way shall be prohibited except where the remainder of the necessary right-of-way has already been platted, dedicated, or established by other means.

9.79.7. Exemptions. New subdivisions that intend to provide one new cul-de-sac street shall be exempt from the connectivity requirement when the UDO Administrator determines that the subdivision will provide for connectivity with adjacent future development and there is:

9.79.7.1. No options for providing stub streets due to topographic conditions, adjacent developed sites, or other limiting factors; and

9.79.7.2. Interconnectivity (use of a looped road) within the development cannot be achieved or is unreasonable based on the constraints of the property to be developed.

SECTION 9.80 RESERVED.

PART VIII. UTILITIES

SECTION 9.81 UTILITY OWNERSHIP AND EASEMENT RIGHTS.

In any case in which a developer installs or causes the installation of water, sewer, electrical power, telephone, natural gas, or cable television facilities and intends that such facilities shall be owned, operated or maintained by a public utility or any entity other than the developer, the developer shall transfer to such utility or entity the necessary ownership or easement rights to enable the utility or entity to operate and maintain such facilities. In addition, the developer, in accordance with Section 9.88, shall dedicate sufficient easement rights to accommodate the extension of utility facilities which will serve adjacent or nearby developments. Refer to the ■Kinston Public Services Infrastructure Design Manual• for more information on right-of-ways and utility alignment/requirements.

SECTION 9.82 LIGHTING REQUIREMENTS.

9.82.1. Subject to subsection 9.82.2., all public streets, sidewalks, and other common areas or facilities in subdivisions created after the effective date of this Ordinance shall be sufficiently illuminated to ensure the security of property and the safety of persons using such streets, sidewalks, and other common areas or facilities. A site lighting plan shall be submitted with all major site plans. Minor and major subdivisions require a lighting plan approved by the City of Kinston Electric System or, in the case of a development located outside of the city▲s electric system service area, Duke Energy Progress.

9.82.2. To the extent that fulfillment of the requirement established in subsection 9.67.1 would normally require street lights installed along public streets, this requirement shall be applicable only to subdivisions located within the corporate limits of the city. Street lights shall be placed at each intersection and at such block spacing as may be required by the public utilities director in accordance with the city's street lighting policies.

9.82.3. All roads, driveways, sidewalks, parking lots, and other common areas and facilities in unsubdivided developments shall be sufficiently illuminated to ensure the security of property and the safety of persons using such roads, driveways, sidewalks, parking lots, and other common areas and facilities.

9.82.4. All entrances and exits in substantial buildings used for nonresidential purposes and in multi-family residential developments containing more than four (4) dwelling units shall be adequately lighted to ensure the safety of persons and the security of the buildings.

9.82.5. Systems using lights other than the standards, such as colonial-style post lantern, set forth within this Ordinance may be approved if payment is made, at the time of platting or development, for the difference in the cost between operating and maintaining the proposed system and a standard system for a period of twenty (20) years.

SECTION 9.83 ILLUMINATION LEVELS.

9.83.1. All site lighting shall be designed so that the level of illumination as measured in foot-candles (fc) at any one point meets the standards in the table below with minimum and maximum levels measured on the pavement within the lighted area and average level (the overall generalized ambient light level), measured as a not-to-exceed value calculated using only the area of the site intended to receive illumination.

LIGHT LEVEL (foot-candles)			
Type of Lighting	**Minimum**	**Average**	**Maximum**
Architectural Lighting	0.0	1.0	5.0
Canopy Area Lighting	2.0	10.0	15.0
Multi-Family Parking Lot	0.2	1.0	8.0
Nonresidential and Multi-Family Entrances	1.0	5.0	15.0
Nonresidential Parking Lot	0.2	1.5	10.0
Storage Area (Security Lighting)	0.2	1.0	10.0
Vehicle Sales and Display	0.2	3.0	15.0
Walkways, Landscape, or Decorative Lighting	0.2	0.8	5.0

9.83.2. The maximum level of illumination at the outer perimeter of the site or project shall be 0.2 foot-candles when abutting a residential zoning district and 0.5 foot-candles when abutting all other districts and/or streets.

SECTION 9.84 EXCESSIVE ILLUMINATION.

9.84.1. Lighting within any lot that unnecessarily illuminates any other lot and substantially interferes with the use or enjoyment of such other lot is prohibited. Lighting unnecessarily illuminates another lot if it exceeds the requirements of this Section.

9.84.2. Lighting shall not be oriented so as to direct glare or excessive illumination onto streets in a manner that may distract or interfere with the vision of drivers on such streets.

9.84.3. Fixtures used to accent architectural features, landscaping or art shall be located, aimed or shielded to minimize light spill into the night sky.

9.84.4. Blinking or flashing lights shall be prohibited unless the lights are required as a safety feature (i.e., beacons on towers) or shall be permitted as part of a sign in accordance with Article 9, Part IV, Signs.

SECTION 9.85 ELECTRIC POWER.

Every principal use and every lot within a subdivision shall have available to it a source of electric power adequate to accommodate the reasonable needs of such use and every lot within such subdivision. The provision of electrical service shall be in accordance with the City of Kinston Electric System Policies or, in the case of a development located outside of the city's electric system service area, Duke Energy Progress's policies.

SECTION 9.86 TELEPHONE SERVICE.

Every principal use and every lot within a subdivision must have available to it a telephone service cable adequate to accommodate the reasonable needs of such use and every lot within such subdivision.

SECTION 9.87 UNDERGROUND UTILITIES.

9.87.1. All electric power lines (not to include transformers or enclosures containing electrical equipment including, but not limited to, switches, meters or capacitors which may be pad mounted), telephone, gas distribution, and cable television lines in residential subdivisions constructed after the effective date of this Ordinance are encouraged to be placed underground in accordance with the specifications and policies of the respective utility service providers.

9.87.2. Whenever an unsubdivided residential development is hereafter constructed on a lot that is undeveloped on the effective date of this Ordinance, then all electric power, telephone, gas distribution, and cable television lines installed to serve the development that are located on the development site outside of a previously existing public street right-of-way are encouraged to be placed underground in accordance with the specifications and policies of the respective utility companies.

SECTION 9.88 UTILITIES TO BE CONSISTENT WITH INTERNAL AND EXTERNAL DEVELOPMENT.

9.88.1. Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, such utility facilities (e.g., water or sewer lines) shall be located and constructed so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service as determined by the City of Kinston. The dedication of requisite utility easements and/or the construction of utility facilities may be required, as determined necessary by the City of Kinston, to accommodate utility service to adjacent or nearby properties.

9.88.2. All utility facilities shall be constructed in such a manner as to minimize interference with pedestrian or vehicular traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

SECTION 9.89 AS-BUILT DRAWINGS REQUIRED.

Whenever a developer installs or causes to be installed any utility line in any public right-of-way, the developer shall, as soon as practicable after installation is complete, furnish the city with a mylar reproducible copy and one (1) print copy of a drawing that shows the exact location of such utility lines. Such drawings must be verified as accurate by the utility service provider and must be certified by a registered, professional engineer that the utility lines have been installed according to applicable state and city specifications. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing such development. Failure to submit the as-built drawings may result in the city withholding additional water, sewer, and electrical services to the development.

SECTION 9.90 FIRE HYDRANTS.

Every development (subdivided or unsubdivided) that is served by a public water system shall include a system of fire hydrants sufficient to provide adequate fire protection for the buildings located or intended to be located within such development in accordance with the provisions of the City of Kinston "Manual for the Design and Construction of Water and Wastewater System Extensions and Street and Drainage Systems.•

SECTION 9.91 SITES FOR AND SCREENING OF DUMPSTERS.

9.91.1. Every development that, under the city's solid waste collection policies, is or will be required to provide one (1) or more dumpsters for solid waste collection shall provide sites for such dumpsters that are:

9.91.1.1. Located so as to facilitate collection and minimize any negative impact on persons occupying the development site, neighboring properties, or public rights-of-way; and

9.91.1.2. Constructed according to specifications established by the public works director to allow for collection without damage to the development site or the collection vehicle.

9.91.2. All such dumpsters shall be screened in accordance with the provisions of Section 9.7.4.

SECTION 9.92 LOTS SERVED BY GOVERNMENTALLY OWNED WATER OR SEWER LINES.

9.92.1. Whenever it is legally possible and practicable in terms of topography to connect a lot with a city water or sewer line by running a connecting line not more than five hundred (500) feet from the lot to such line, then no use requiring water or sewage disposal service may be made of such lot unless connection is made to such line.

9.92.2. Connection to such water or sewer line is not legally possible if, in order to make connection with such line by a connecting line that does not exceed five hundred (500) feet in length, it is necessary to run the connecting line over property not owned by the owner of the property to be served by the connection and, after diligent effort, the easement necessary to run the connecting line cannot reasonably be obtained.

9.92.3. For purposes of this article, a lot is "served" by a city-owned water or sewer line if connection is required by this section.

9.92.4. Water and sewer extensions shall be made in accordance with the provisions of the City of Kinston water and sewer extension policies and shall conform to the city's design standards and specifications (see the City of Kinston "Manual for the Design and Construction of Water and Wastewater System Extensions and Street and Drainage Systems•).

SECTION 9.93 SEWAGE DISPOSAL FACILITIES REQUIRED.

Every principal use and every lot within a subdivision shall be served by a sewage disposal system that is adequate to accommodate the reasonable needs of such use or subdivision lot and that complies with all applicable health regulations.

SECTION 9.94 DETERMINING COMPLIANCE WITH SECTION 9.93.

9.94.1. Primary responsibility for determining whether a proposed development will comply with the standard set forth in Section 9.93 often lies with an agency other than the city and the developer must comply with the detailed standards and specifications of such other agency. The relevant agencies are listed in subsection 9.94.2. Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed sewage disposal system, the authority issuing a permit under this chapter may rely upon a preliminary review by such agency of the basic design elements of the proposed sewage disposal system to determine compliance with Section 9.93. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued by such agency.

9.94.2. In the following table, the column on the left describes the type of development and the column on the right indicates the agency that must certify to the city whether the proposed sewage disposal system complies with the standard set forth in Section 9.93.

	If:		Then:
(1)	The use is located on a lot that is served by the city sewer system or a previously approved, privately-owned package treatment plant, and the use can be served by a simple connection to the system (as in the case of a single-family residence) rather than the construction of an internal collection system (as in the case of a shopping center or apartment complex):		No further certification is necessary.
(2)	The use (other than a subdivision) is located on a lot that is served by the city sewer system but service to the use necessitates construction of an internal collection system (as in the case of shopping center or apartment complex); and		
	(a)	The internal collection system is to be transferred to one maintained by the city:	The Division of Environmental Management must certify to the city that the proposed internal collection system meets the city•s specifications and will be accepted by the city. (A ■Permit to Construct• must be obtained from the Division of Environmental Management.)
	(b)	The internal collection system is to be privately-maintained:	The developer must obtain a ■Permit to Construct• from the DEM.

(3)	The use (other than a subdivision) is not served by the city system but is to be served by a privately operated sewage treatment system (that has not previously been approved) with three thousand (3,000) gallons or less design capacity, the effluent from which does not discharge to surface water:		The county health department (CHD) must certify to the city that the proposed system complies with all applicable state and local health regulations. If the proposed use is a single dwelling other than a manufactured home, the developer must obtain an improvements permit from the CHD. If the proposed use is a single-family manufactured home, the developer must present to the city a certificate of completion from the CHD.
(4)	The use (other than a subdivision) is to be served by a privately-operated sewage system (not previously approved) that has a design capacity of more than three thousand (3,000) gallons or that discharges effluent into surface waters:		The Division of Environmental Management (DEM) or other appropriate state agency must certify to the city that the proposed system complies with all applicable state regulations. (A ■Permit to Construct• and a ■Permit to Discharge• must be obtained from DEM.)
(5)	The proposed use is a subdivision; and		
	(a)	Lots within the subdivision are to be served by simple connection to existing city lines or lines of a previously approved private system:	No further certification is necessary.
	(b)	Lots within the subdivision are to be served by the city system but the developer will be responsible for installing the necessary additions to the city system:	The Public Services Director must certify to the city that the proposed system meets the city•s specifications and will be accepted by the city. (A ■Permit to Construct• must be obtained from the Division of Environmental Management of the North Carolina Department of Environment and Natural Resources.)
	(c)	Lots within the subdivision are to be served by a sewage treatment system that has not been approved, that has a design capacity of three thousand (3,000) gallons or less, and that does not discharge into surface waters:	The county health department must certify that the proposed system complies with all applicable state and local health regulations. If each lot within the subdivision is to be served by a separate on-site disposal system, the CHD must certify that each lot shown on a major division preliminary plat can probably be served and each lot on a major or minor subdivision final plat can be served by an on-site disposal system.
	(d)	Lots within the subdivision are to be served by a privately-operated sewage treatment system (not previously approved) that has a design capacity in excess of three thousand (3,000) gallons or that discharges effluent into surface waters:	The Division of Environmental Management or other appropriate state agency must certify that the proposed system complies with all applicable state regulations. (A "Permit to Construct" and a "Permit to Discharge" must be obtained from DEM.)

ARTICLE 9. PERFORMANCE STANDARDS

PART IX. FLOOD DAMAGE PREVENTION

SECTION 9.95 STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the City Council of the City of Kinston, North Carolina, does ordain as follows.

SECTION 9.96 FINDINGS OF FACT.

9.96.1. The flood prone areas within the jurisdiction of the City of Kinston are subject to periodic inundation which results in loss of life, 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.

9.96 2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION 9.97 STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

9.97.1. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

9.97.2. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;

9.97.3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

9.97.4. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and

9.97.5. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

SECTION 9.98 OBJECTIVES.

The objectives of this ordinance are to:

9.98.1. Protect human life, safety, and health;

9.98.2. Minimize expenditure of public money for costly flood control projects;

9.98.3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

9.98.4. Minimize prolonged business losses and interruptions;

9.98.5. Minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;

9.98.6. Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and

9.98.7. Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

SECTION 9.99 GENERAL PROVISIONS.

9.99.1. Lands to Which This Ordinance Applies.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extraterritorial Jurisdictions (ETJs), of the City of Kinston.

9.99.2. Basis for Establishing the Special Flood Hazard Areas.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) for Lenoir County, dated April 16, 2013, and its accompanying Flood Insurance Rate Map Panels (3720358400K, 3720359600K, 3720450200K, 3720450400K, 3720450600K, 3720450700K, 3720451600K, 3720451700K, 3720451800K, 3720452200K, 3720452400K, 3720452500K, 3720452600K, 3720452700K, 3720452800K, 3720453400K, 3720453500K, 3720453600K, 3720453700K, 3720454400K, and 3720454500K), including any digital data developed as part of the FIS, which are adopted by reference and declared to be a part of this ordinance. Future revisions to

the FIS or FIRM panels that do not change flood hazard data within the jurisdictional authority of the City of Kinston are also adopted by reference and declared to be part of this ordinance. Subsequent revisions to the FIRM should be adopted within twelve (12) months.

The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date: Lenoir County Unincorporated Area, dated January 6, 1983; City of Kinston, dated June 15, 1982.

9.99.3. Establishment of Floodplain Development Permit.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Section 9.99.2 of this ordinance.

9.99.4. Compliance.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

9.99.5. Abrogation and Greater Restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

9.99.6. Interpretation.

In the interpretation and application of this ordinance, all provisions shall be:

9.99.6.1. Considered as minimum requirements;

9.99.6.2. Liberally construed in favor of the governing body; and

9.99.6.3. Deemed neither to limit nor repeal any other powers granted under State statutes.

9.99.7. Warning and Disclaimer of Liability.

The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This section does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the City of Kinston or by any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made hereunder.

9.99.8. Penalties for Violation.

Violation of the provisions of the flood damage prevention regulations 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 misdemeanor. Any person who violates this regulations or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Kinston from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION 9.100 ADMINISTRATION.

9.100.1. Designation of Floodplain Administrator.

The UDO Administrator, hereinafter referred to as the "Floodplain Administrator," is hereby appointed to administer and implement the provisions of these regulations.

9.100.2. Floodplain Development Application, Permit, and Certification Requirements.

9.100.2.1. Application Requirements. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

9.100.2.1.1. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

9.100.2.1.1.1. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

9.100.2.1.1.2. The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 9.99.2, or a statement that the entire lot is within the Special Flood Hazard Area;

9.100.2.1.1.3. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 9.99.2;

9.100.2.1.1.4. The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 9.99.2;

9.100.2.1.1.5. The Base Flood Elevation (BFE) where provided as set forth in Section 9.99.2; Section 9.100.3; or Section 9.103;

9.100.2.1.1.6. The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

9.100.2.1.1.7. The certification of the plot plan by a registered land surveyor or professional engineer.

9.100.2.1.2. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

9.100.2.1.2.1. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;

9.100.2.1.2.2. Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be floodproofed; and

9.100.2.1.2.3. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

9.100.2.1.3. If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.

9.100.2.1.4. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:

9.100.2.1.4.1. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and

9.100.2.1.4.2. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Section 9.102.4.3 when solid foundation perimeter walls are used in Zones AE, A, or AO.

9.100.2.1.5. Usage details of any enclosed areas below the lowest floor.

9.100.2.1.6. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

9.100.2.1.7. Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.

9.100.2.1.8. Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Section 9.98.6 and 9.98.7 of this Ordinance are met.

9.100.2.1.9. A description of proposed watercourse alteration or relocation, when applicable, including 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 (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

9.100.2.2. Permit Requirements. The Floodplain Development Permit shall include, but not be limited to:

9.100.2.2.1. A description of the development to be permitted under the floodplain development permit.

9.100.2.2.2. The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Section 9.99.2.

9.100.2.2.3. The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.

9.100.2.2.4. The Regulatory Flood Protection Elevation required for the protection of all public utilities.

9.100.2.2.5. All certification submittal requirements with timelines.

9.100.2.2.6. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.

9.100.2.2.7. The flood openings requirements, if in Zones AE, A, or AO.

9.100.2.2.8. Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only).

9.100.2.3. Certification Requirements.

9.100.2.3.1. Elevation Certificates.

9.100.2.3.1.1. An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

9.100.2.3.1.2. An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

9.100.2.3.1.3. A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification

may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

9.100.2.3.2. Floodproofing Certificate. If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

9.100.2.3.3. If a manufactured home is placed within Zone AE, A, or AO and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Section 9.102.3.2.

9.100.2.3.4. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified 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 shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

9.100.2.3.5. Certification Exemptions. The following structures, if located within Zone AE, A, or AO, are exempt from the elevation/floodproofing certification requirements specified in items 9.100.2.3.5.1 and 9.100.2.3.5.2 of this subsection:

9.100.2.3.5.1. Recreational Vehicles meeting requirements of Section 9.102.6.1;

9.100.2.3.5.2. Temporary Structures meeting requirements of Section 9.102.7; and

9.100.2.3.5.3. Accessory Structures less than 150 square feet meeting requirements of Section 9.102.8.

9.100.2.4. Determinations for Existing Buildings and Structures. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

9.100.2.4.1. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

9.100.2.4.2. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

9.100.2.4.3. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

9.100.2.4.4. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and these regulations are required.

9.100.3. Duties and Responsibilities of the Floodplain Administrator.

The Floodplain Administrator shall perform, but not be limited to, the following duties:

9.100.3.1. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of these regulations have been satisfied.

9.100.3.2. Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

9.100.3.3. Notify adjacent communities and the North Carolina Department of 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 such notification to the Federal Emergency Management Agency (FEMA).

9.100.3.4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.

9.100.3.5. Prevent encroachments into floodways or non-encroachment areas unless the certification and flood hazard reduction provisions of Section 9.105 are met.

9.100.3.6. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 9.100.2.3.

9.100.3.7. Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Section 9.100.2.3.

9.100.3.8. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Section 9.100.2.3.

9.100.3.9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Section 9.100.2.3 and Section 9.102.2.

9.100.3.10. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (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 article.

9.100.3.11. When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of Section 9.99.2, obtain, review, and reasonably utilize any BFE data,

along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to 9.103.2.2, in order to administer the provisions of these regulations.

9.100.3.12. When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Section 9.99.2, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of these regulations.

9.100.3.13. When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.

9.100.3.14. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

9.100.3.15. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain 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 ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

9.100.3.16. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

9.100.3.17. Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall

be revoked for any substantial departure from the approved application, plans, and 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 floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

9.100.3.18. Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

9.100.3.19. Follow through with corrective procedures of Section 9.100.4.

9.100.3.20. Review, provide input, and make recommendations for variance requests.

9.100.3.21. Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of Section 9.99.2 of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

9.100.3.22. Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

9.100.4. Corrective Procedures.

9.100.4.1. Violations to be Corrected. When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

9.100.4.2. Actions in Event of Failure to Take Corrective Action. If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

9.100.4.2.1. That the building or property is in violation of the floodplain management regulations;

9.100.4.2.2. That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) 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

9.100.4.2.3. That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.

9.100.4.3. Order to Take Corrective Action. If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention regulations, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

9.100.4.4. Appeal. Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

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

9.100.5. Variance Procedures.

9.100.5.1. The Board of Adjustment as established by the City of Kinston, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.

9.100.5.2. Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

9.100.5.3. Variances may be issued for:

9.100.5.3.1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

9.100.5.3.2. Functionally dependent facilities if determined to meet the definition as stated in Appendix A of this Ordinance, provided provisions of Section 9.100.5.9.2, 9.100.5.9.3, and 9.100.5.9.5 have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

9.100.5.3.3. Any other type of development, provided it meets the requirements of this section.

9.100.5.4. In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

9.100.5.4.1. The danger that materials may be swept onto other lands to the injury of others;

9.100.5.4.2. The danger to life and property due to flooding or erosion damage;

9.100.5.4.3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

9.100.5.4.4. The importance of the services provided by the proposed facility to the community;

9.100.5.4.5. The necessity to the facility of a waterfront location as defined under Appendix A of this ordinance as a functionally dependent facility, where applicable;

9.100.5.4.6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

9.100.5.4.7. The compatibility of the proposed use with existing and anticipated development;

9.100.5.4.8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9.100.5.4.9. The safety of access to the property in times of flood for ordinary and emergency vehicles;

9.100.5.4.10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

9.100.5.4.11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

9.100.5.5. A written report addressing each of the above factors shall be submitted with the application for a variance.

9.100.5.6. Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of these regulations.

9.100.5.7. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to $25 per $100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

9.100.5.8. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

9.100.5.9. Conditions for Variances:

9.100.5.9.1. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

9.100.5.9.2. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

9.100.5.9.3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

9.100.5.9.4. Variances shall only be issued prior to development permit approval.

9.100.5.9.5. Variances shall only be issued upon:

9.100.5.9.5.1. A showing of good and sufficient cause;

9.100.5.9.5.2. A determination that failure to grant the variance would result in exceptional hardship; and

9.100.5.9.5.3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

9.100.5.10. A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.

9.100.5.10.1. The use serves a critical need in the community.

9.100.5.10.2. No feasible location exists for the use outside the Special Flood Hazard Area.

9.100.5.10.3. The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.

9.100.5.10.4. The use complies with all other applicable Federal, State and local laws.

9.100.5.10.5. The City of Kinston has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

SECTION 9.101 GENERAL STANDARDS FOR FLOOD HAZARD REDUCTION.

In all Special Flood Hazard Areas the following provisions are required:

9.101.1. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

9.101.2. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

9.101.3. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

9.101.4. 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 to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.

9.101.5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

9.101.6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.

9.101.7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

9.101.8. Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this Ordinance.

9.101.9. Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

9.101.10. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Section 9.100.5.10. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Section 9.100.2.3.

9.101.11. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

9.101.12. All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

9.101.13. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

9.101.14. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

9.101.15. When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

9.101.16. When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.

SECTION 9.102 SPECIFIC STANDARDS FOR FLOOD HAZARD REDUCTION.

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Section 9.99.2, or Section 9.103, the following provisions, in addition to the provisions of Section 9.101, are required:

9.102.1. Residential Construction.

New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Appendix A of this Ordinance.

9.102.2. Non-Residential Construction.

New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Appendix A of this Ordinance. Structures located in Zones AE, A, or AO may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection 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. For Zone AO, the floodproofing elevation shall be in accordance with Section 9.106.2. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 9.100.2.3, along with the operational plan and the inspection and maintenance plan.

9.102.3. Manufactured Homes.

9.102.3.1. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Appendix A of this Ordinance.

9.102.3.2. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

9.102.3.3. All enclosures or skirting below the lowest floor shall meet the requirements of Section 9.102.4.

9.102.3.4. 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 Floodplain Administrator and the local Emergency Management Coordinator.

9.102.4. Elevated Buildings.

Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

9.102.4.1. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

9.102.4.2. Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and

9.102.4.3. Shall include, in Zones AE, A, or AO, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

9.102.4.3.1. A minimum of two flood openings on different sides of each enclosed area subject to flooding;

9.102.4.3.2. The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;

9.102.4.3.3. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

9.102.4.3.4. The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;

9.102.4.3.5. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

9.102.4.3.6. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

9.102.5. Additions/Improvements.

9.102.5.1. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

9.102.5.1.1. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.

9.102.5.1.2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

9.102.5.2. Additions to post-FIRM structures that are a substantial improvement with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

9.102.5.3. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

> ***9.102.5.3.1.*** Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
>
> ***9.102.5.3.2.*** A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

9.102.5.4. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a (number of years) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the (number of years) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

> ***9.102.5.4.1.*** Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
>
> ***9.102.5.4.2.*** Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

9.102.6. Recreational Vehicles.

9.102.6.1. Temporary Placement. Recreational vehicles placed temporarily in flood hazard areas shall:

9.102.6.1.1. Be on site for fewer than 180 consecutive days; or

9.102.6.1.2. Be fully licensed and ready for highway use (a recreational vehicle ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and security devices has no permanent attachments such as additions, rooms stairs, decks, and porches).

9.102.6.2. Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary placement shall meet all the requirements for new construction.

9.102.7. Temporary Non-Residential Structures.

Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

9.102.7.1. A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;

9.102.7.2. The name, address, and phone number of the individual responsible for the removal of the temporary structure;

9.102.7.3. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

9.102.7.4. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

9.102.7.5. Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

9.102.8. Accessory Structures.

When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

9.102.8.1. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);

9.102.8.2. Accessory structures shall not be temperature-controlled;

9.102.8.3. Accessory structures shall be designed to have low flood damage potential;

9.102.8.4. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

9.102.8.5. Accessory structures shall be firmly anchored in accordance with the provisions of Section 9.101.1;

9.102.8.6. All service facilities such as electrical shall be installed in accordance with the provisions of Section 9.101.4; and

9.102.8.7. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section 9.102.4.3.

An accessory structure with a footprint less than 150 square feet or that is a minimal investment of $10,000 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Section 9.102.2. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 9.100.2.3.

9.102.9. Tanks.

When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

9.102.9.1. Underground Tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

9.102.9.2. Above-Ground Tanks, Elevated. Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting

structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

9.102.9.3. Above-Ground Tanks, Not Elevated. Above-ground tanks that do not meet the elevation requirements of Section 9.102.2 of this Ordinance shall be permitted in flood hazard areas provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

9.102.9.4. Tank Inlets and Vents. Tank inlets, fill openings, outlets and vents shall be:

9.102.9.4.1. At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

9.102.9.4.2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

9.102.10. Other Development.

9.102.10.1. Fences in a regulated floodway or non-encroachment area that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall require a floodway encroachment analysis and meet the limitations of Section 9.105 of this Ordinance.

9.102.10.2. Retaining walls, sidewalks, or driveways in a regulated floodway or non-encroachment area. Retaining walls, sidewalks, or driveways that involve the placement of fill in a regulated floodway or non-encroachment area shall require a floodway encroachment analysis and meet the limitations of Section 9.105 of this Ordinance.

9.102.10.3. Roads or watercourse crossings in a regulated floodway or non-encroachment area. Roads or watercourse crossings, including roads, bridges, culverts, low-water crossings or similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into a regulated floodway or

non-encroachment area shall require a floodway encroachment analysis and meet the limitations of Section 9.105 of this Ordinance.

SECTION 9.103 STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Section 9.99.2, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Section 9.101, shall apply:

9.103.1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, 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.

9.103.2. The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:

9.103.2.1. When Base Flood Elevation (BFE) data is available from other sources, all new construction, substantial improvements, or other development within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Sections 9.101 and 9.102.

9.103.2.2. When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction, substantial improvements, or other development within floodway or non-encroachment areas shall also comply with the requirements of Sections 9.102 and 9.105.

9.103.2.3. All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Section 9.99.2 and utilized in implementing these regulations.

9.103.2.4. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed

(nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Appendix A. All other applicable provisions of Section 9.102 shall also apply.

SECTION 9.104 STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

9.104.1. Standards of Sections 9.101 and 9.102; and

9.104.2. Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

SECTION 9.105 FLOODWAYS AND NON-ENCROACHMENT AREAS.

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section 9.99.2. The floodways or non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Sections 9.101 and 9.102, shall apply to all development within such areas:

9.105.1. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

9.105.1.1. It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or

9.105.1.2. A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

9.105.2. If Section 9.105.1 is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

9.105.3. Manufactured homes may be permitted provided the following provisions are met:

9.105.3.1. The anchoring and the elevation standards of Section 9.102.3; and

9.105.3.2. The no encroachment standard of Section 9.105.1.

SECTION 9.106 STANDARDS FOR AREAS OF SHALLOW FLOODING (ZONE AO).

Located within the Special Flood Hazard Areas established in Section 9.99.2, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Section 9.101 and 9.102, all new construction and substantial improvements shall meet the following requirements:

9.106.1. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of two (2) feet, above the highest adjacent grade; or at least four (4) feet above the highest adjacent grade if no depth number is specified (residential construction only).

9.106.2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section 9.106.1 so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Sections 9.100.2.3 and 9.102.2.

9.106.3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

SECTION 9.107 LEGAL STATUS PROVISIONS.

9.107.1. Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance.
These regulations in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted March 1, 2004, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of these regulations shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the City of Kinston enacted on March 1, 2004, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Lenoir County is July 7, 1980.

9.107.2. Effect Upon Outstanding Floodplain Development Permits.
Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this Ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this Ordinance.

PART X. HISTORIC OVERLAY DISTRICT REGULATIONS

SECTION 9.108 GENERAL REGULATIONS.

The use and development of any land or structure within the Historic Overlay (HO) District shall comply with the use regulations and intensity regulations applicable to the underlying zoning district except that (i) no manufactured home shall be located within an Historic Overlay District, (ii) no building or part of a building shall extend nearer to or be required to be set back further from the front street right-of-way than the average distance of the setbacks of the nearest principal structures in the vicinity of such building and fronting on the same side of the street, and (iii) no principal or accessory building shall be required to be set back further from a side or rear property line than the average distance of the setbacks of the nearest principal or accessory structures in the vicinity of such building.

SECTION 9.109 CERTIFICATE OF APPROPRIATENESS REQUIRED.

9.109.1. No exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), or any aboveground utility structure, or any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished within the historic district until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the historic district commission.

9.109.2. For purposes of this article, "exterior architectural features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior architectural features" shall be construed to mean the style, material, size, and location of all such signs.

9.112.3. Such a certificate of appropriateness shall be issued by the commission prior to the issuance of a building permit or any other permit granted for purposes of constructing, altering, or demolishing buildings or structures. A certificate of appropriateness shall be required whether or not a building permit is required. Any building permit or other permit not issued in conformity with this section shall be invalid.

9.109.4. The commission shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district which would be incongruous with the special character of the district.

9.109.5. Prior to any action to enforce a landmark or historic district ordinance, the commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principals and guidelines for new construction, alterations, additions, moving and demolition.

SECTION 9.110 MAINTENANCE OR REPAIR.

9.110.1. Nothing in this Part shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district that does not involve a change in design, material, or outer appearance thereof, or to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of any such feature that the building inspector or similar official shall certify is required for the public safety because of unsafe or dangerous condition. Ordinary maintenance or repair shall include, but is not limited to, the following:

9.110.1.1. Painting of structures, when said painting is not connected with alteration or new construction.

9.110.1.2. Interior work which does not result in any exterior changes.

9.110.1.3. Planting of yard vegetables, shrubbery, trees, etc.

9.110.1.4. Replacement of window glass with a pane of equal dimensions and transparency.

9.110.1.5. Caulking and weatherstripping.

9.110.1.6. Installation on the rear or side of the house window air conditions, television antennas, and other temporary mechanical equipment.

9.110.1.7. Repairs to walks, patios, fences, and driveways so long as the replacement materials match the original.

9.110.1.8. Replacement of small amounts of missing or deteriorated siding, roof shingles, porch flooring, steps or railing so long as the replacement materials are identical to the original. (For siding, roofing and porch flooring, twenty (20) square feet or less shall be considered normal maintenance.)

9.110.2. On the basis of preliminary sketches or drawings and other supporting data, the UDO Administrator may exempt from requirements for a certificate of appropriateness projects involving the ordinary maintenance or repair of any exterior architectural feature that does not involve a change in design, material, or outer appearance thereof. The UDO Administrator shall notify the commission of all such exemptions.

9.110.3. Nothing in this section shall be construed to prevent a property owner from making any use of his property that is not prohibited by other law. Nothing in this section shall be construed to prevent (i) the maintenance or, (ii) in the event of an emergency, the immediate restoration of any existing aboveground utility structure without approval by the historic district commission.

SECTION 9.111 PROCEDURES FOR APPROVAL OF CERTIFICATES OF APPROPRIATENESS.

9.111.1. Application Submittal Requirements.

9.111.1.1. Applications for certificates of appropriateness shall be filed with the UDO Administrator ten (10) working days prior to the next regularly scheduled meeting of the commission in order to be considered at the meeting.

9.111.1.2. The UDO Administrator shall prescribe the form(s) on which applications are made, as well as any other material which may reasonably be required to determine the nature of the application.

9.111.1.3. The commission may specify criteria for situations in which the UDO Administrator may waive any of the application material requirements.

9.111.1.4. No application shall be accepted by the UDO Administrator unless it complies with such requirements. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

9.111.2. Notification of Affected Property Owners.

Prior to approval or denial of an application for a certificate of appropriateness, the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard.

9.111.3. Public Hearing.

In cases where the commission deems it necessary, it may hold a public hearing concerning the application.

9.111.4. Commission Action.

Within sixty (60) days of the acceptance of an application, or within such further time consented to by written notice from the applicant, the commission shall take action on the application. Such action shall be based upon the review criteria established in Sections 9.109 and 9.110, and shall be one (1) of the following:

9.111.4.1. Approval.
9.111.4.2. Approval subject to conditions.
9.111.4.3. Denial.

Failure of the commission to take final action on an application within the prescribed time limit, or extensions thereof shall result in approval of the application as submitted.

The commission may impose such reasonable conditions on its approval of an application as will ensure that the spirit and intent of this article are achieved.

9.111.5. Demolition, Relocation.

An application for a certificate of appropriateness authorizing the relocation, demolition, or destruction of a building or structure within the historic district may not be denied. However, the effective date of such a certificate may be delayed for a period of up to three hundred sixty-five (365) days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period, the commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building. If the commission finds that the building has no particular significance or value toward maintaining the character of the historic district, it shall waive all or part of such period and authorize earlier demolition or removal. In every case, the record of the commission's action shall include the reasons for its action.

If the commission or planning agency has voted to recommend designation of an area as a district, and final designation has not been made by the City Council, the demolition or destruction of any building, site, or structure located in the proposed district may be delayed by the commission or planning agency for a period of up to one hundred eighty (180) days or until the local governing board takes final action on the designation, whichever occurs first.

The City Council may enact an ordinance to prevent the demolition by neglect of any building or structure within an established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.

An application for a certification of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

9.111.6. Actions Subsequent to Decision.

The UDO Administrator shall notify the applicant of the commission's decision in writing and shall file a copy of it with the city's planning department. If the applicant is denied, the notice shall include the reasons for such action.

9.111.7. Appeal of Decision.

A decision by the commission on an application for a certificate of appropriateness may be appealed to the Board of Adjustment. Appeals may be taken by any aggrieved party, shall be taken within times prescribed by the historic district commission by general rule and shall be in the nature of certiorari. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the Superior Court of Lenoir County.

9.111.8. Submission of New Application.

If the commission denies an application for a certificate of appropriateness, a new application affecting the same property may be submitted only if substantive change is made in plans for the proposed construction, reconstruction, alteration, restoration, or moving.

SECTION 9.112 REVIEW CRITERIA.

9.112.1. In considering an application for a certificate of appropriateness, the commission shall take into account the historical and/or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure that are visible from a public right-of-way. The commission shall not consider interior arrangement or use.

9.112.2. The commission, using the criteria below, shall make findings of fact indicating the extent to which the application is or is not congruous with the historic aspects of the historic district. The following design features shall be considered, when relevant, by the commission in reviewing applications for a certificate of appropriateness:

> ***9.112.2.1.*** The height of the building in relation to the average height of the nearest adjacent and opposite buildings.

9.112.2.2. The setback and placement on lot of the building in relation to the average setback and placement of the nearest adjacent and opposite buildings.

9.112.2.3. Exterior construction materials, including texture and pattern.

9.112.2.4. Architectural detailing, such as lintels, cornices, brick bond, and foundation materials.

9.112.2.5. Roof shapes, forms, and materials.

9.112.2.6. Proportion, shape, positioning and location, pattern, and size of any elements of fenestration.

9.112.2.7. General form and proportions of buildings and structures.

9.112.2.8. Appurtenant fixtures and other features such as lighting.

9.112.2.9. Structural conditions and soundness.

9.112.2.10. Architectural scale.

SECTION 9.113 PARKING SPACES.

Where the historic district commission, in considering an application for a certificate of appropriateness, shall find that the number of off-street parking spaces required by this ordinance for a building or structure for which a building permit is requested would render the building and/or parking area incongruous with the historic aspects of the district, it shall recommend to the Board of Adjustment a waiver, in part or in whole, of the off-street parking requirements. The Board of Adjustment may authorize a lesser number of off-street parking spaces, provided:

9.113.1. The Board finds that the lesser number of off-street parking spaces will not create problems due to increasing on-street parking; and

9.113.2. Will not constitute a threat to the public safety.

SECTION 9.114 RESTORATION/RECONSTRUCTION.

9.114.1. Where it is found by the historic district commission that an application for a building permit covers activity constituting an authentic restoration or reconstruction in the same location as the original location and in the original configuration of a structure of historic and/or architectural significance to the historic district, such activity may be approved by the Board of Adjustment, following approval by the historic district commission. This allows the waiver of zoning requirements which would otherwise prevent the authentic restoration or reconstruction of a structure so long as said improvement shall meet the requirements of the commission.

9.114.2. The Board of Adjustment shall not be authorized, in action undertaken by this section, to approve a use of property which is not a use permitted by right or as a conditional use within the district in which the property is located.

9.114.3. In addition to any other conditions the Board of Adjustment may make regarding such authorization, any items restored, reconstructed or maintained on, over or within a public sidewalk, public alley area or other such public way shall be the responsibility of the owner, his heirs and assigns. The owner's restoration, reconstruction or maintenance of any such item within such area shall constitute the owner's agreement to protect and hold the City of Kinston harmless against any and all liability, cost, damage or expense suffered by the City of Kinston as a result of or growing out of the restoration, reconstruction or maintenance thereof. Such items, so approved, may be lawfully restored, reconstructed or maintained. Any such item projecting over the right-of-way of a street or alley shall be, at its lowest point, twelve (12) feet above the travel way.

SECTION 9.115 MINOR WORK.

The UDO Administrator is authorized to approve minor works with a certificate of appropriateness with prior categorical consent by the commission. For any work not approved as minor, an application for a certificate of appropriateness must be reviewed by the commission. No application for a certificate of appropriateness for minor work may be denied without formal action by the commission. The UDO Administrator shall use the following criteria in determining whether a proposed action is a minor work:

9.115.1. Renewal of expired certificate of appropriateness where no change or circumstances under which the certificate was approved originally.

9.115.2. Street, sidewalk and underground utility work which does not substantially change the appearance of the streetscape, such as replacement of water and sewer lines, street resurfacing and installation or replacement of sidewalk and curbing.

9.115.3. Replacement of missing or deteriorated siding, porch floors or roof shingles in excess of twenty (20) square feet, trim, ceiling, columns and balustrades or architectural details with new materials that are identical to the original.

9.115.4. Removal of asbestos, asphalt or other artificial siding when the original siding is to be repaired and repainted.

9.115.5. Installation of metal foundation vents on side and rear only, soffit and roof vents, gable end vents and replacement of wood access doors. Installation of foundation access doors which cannot easily be seen from the street.

9.115.6. Installation of mechanical equipment such as satellite receiving dishes, heating and air conditioning units, etc., which cannot be seen easily from the street or are screened from view with shrubbery or appropriate fencing.

9.115.7. Minor work where there is no change in materials or appearance of the structure and where the visual character of the structure is not changed; i.e., replacement of a deteriorated front porch floor when new material matches the original.

9.115.8. Repair or replacement of masonry foundation where the original foundation material is retained or where new material matches the original.

9.115.9. Small identification signs or historic markers previously approved by the commission.

9.115.10. Repainting and other masonry repairs when the color and composition of the mortar matches the original and new brick or stone matches the original.

9.115.11. Installation of storm windows, so long as they are of one-over-one construction and the sash and trim are not covered and a baked enamel finish which compliments or matches the structure is used.

9.115.12. Installation of storm doors so long as they are of "full view" type and highlight the features of the main door and frame and a baked enamel finish which compliments or matches the structure is used.

9.115.13. Sympathetic applications for vinyl or aluminum siding that maintains the original sidings size, shape, rhythm and detailing.

9.115.14. Repainting (of a house) when the color is requested and the new color/colors is/are among the preapproved paint colors.

ARTICLE 9. PERFORMANCE STANDARDS

SECTION 9.116 APPLICABILITY.

All of the provisions of this Part are hereby made applicable to construction, alteration, moving and demolition by the State of North Carolina, its political subdivisions, agencies and instrumentalities, provided, however, they shall not apply to interiors of buildings or structures owned by the State of North Carolina. The state and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under GS 121-12(a) from any decision of a local preservation commission. The commission shall render its decision within thirty (30) days from the date that the notice of appeal by the state is received by it. The current edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used in reviewing applications of the state for certificates of appropriateness. The decision of the commission shall be final and binding upon both the state and the historic district commission.

SECTION 9.117 CONFLICTS WITH OTHER REGULATIONS.

Whenever any ordinance adopted pursuant to this Part requires a longer waiting period or imposes other higher standards with respect to a designated district than are established under any other statute, charter provision, or regulation, this section shall govern. Whenever the provisions of any other statute, charter provision, ordinance or regulation require a longer waiting period or impose other higher standards than are established under this section, such other statue, charter provision, ordinance or regulation shall govern.

SECTION 9.118 ENFORCEMENT.

9.118.1. Compliance with the terms of the certificate of appropriateness shall be enforced by the UDO Administrator. Failure to comply with a certificate of appropriateness shall be a violation of this Ordinance. The failure to begin work, discontinuance of work, or the lack of progress toward achieving compliance with a certificate of appropriateness for a period of six (6) months shall be considered as a failure to comply with a certificate of appropriateness and thus, it expires.

9.118.2. In case any building, structure, site, area or object located within a historic district designated pursuant to this Part is about to be demolished, whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the ordinance or other provisions of this section, the city or county, the historic district commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area or object. Such remedies shall be in addition to any other authorized for violation for a municipal ordinance.

PART XI. ROWHOUSE OVERLAY DISTRICT REGULATIONS

SECTION 9.119 GENERAL REGULATIONS.

9.119.1. Allowable Zoning Districts.
B-2 Central Business District and O&I Office and Institutional District.

9.119.2. Permitted Uses.
As allowed in the underlying zoning district.

9.119.3. Conditional Uses.
Rowhouse dwelling; accessory uses; and home occupations.

9.119.4. Parking.
All required parking shall be located in the rear yard.

9.119.5. Minimum Zoning District Area.
20,000 square feet of contiguous area within the rowhouse overlay district. NOTE: It is intended that the rowhouse overlay district will include multiple parcels.

9.119.6. Yard, Area, and Height Requirements.
Minimum yard requirements may be modified through the issuance of a conditional use permit.

9.119.6.1. Minimum lot area: 3,000 square feet.

9.119.6.2. Minimum lot width: 30 feet.

9.119.6.3. Front yard setback: 5 feet in the B-2 district, and as required in the O&I district.

9.119.6.4. Side yard setback: zero (0) setback for units with a shared/common wall, 6 feet for ends of individual buildings.

9.119.6.5. Rear yard setback: 15 feet.

9.119.6.6. Maximum height: 35 feet.

PART XII. RIPARIAN BUFFERS *(Amended 11/20/2017)*

SECTION 9.120 GENERAL PROVISIONS.

Riparian buffers within a lot are to be shown on the recorded plat, and the area of a lot within the riparian buffer must still count toward any dimensional requirements for lot size. If a riparian buffer is designated as a privately-owned common area (e.g., owned by a property owners association), the city shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-regulated regulatory requirements based on property size. Dimensional lot requirements include calculations for, among other things, residential density standards, tree conservation area, open space or conservation area, setbacks, perimeter buffers, and lot area.

APPENDIX A.
DEFINITIONS

Section A.1 Purpose A-2
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APPENDIX A. DEFINITIONS

SECTION A.1 PURPOSE.

For the purposes of this Ordinance, certain words, concept, and ideas are defined herein. Except as defined herein, all other words used in this Ordinance shall have their customary dictionary definition.

SECTION A.2 INTERPRETATION.

A.2.1. As used in this Ordinance, words importing the masculine gender include the feminine and neuter.

A.2.2. Words used in the singular in this Ordinance include the plural and words used in the plural include the singular.

A.2.3. Words used in the present tense include future tense.

A.2.4. The word "person" includes a firm, association, organization, corporation, company, trust, and partnership as well as an individual.

A.2.5. The words "may" and "should" are permissive.

A.2.6. The words "shall" and "will" are always mandatory and not merely directive.

A.2.7. The word "used for" shall include the meaning "designed for."

A.2.8. The words "used" or "occupied" shall mean "intended, designed, and arranged to be used or occupied."

A.2.9. The word "lot" shall include the words "plot," "parcel," "site," and "premises."

A.2.10. The word "structure" shall include the word "building."

A.2.11. The word "street" includes the word "alley," "road," "cul-de-sac," "highway," or "thoroughfare," whether designated as public or private.

A.2.12. 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.

A.2.13. The word "UDO Administrator" shall mean the UDO Administrator or his/her designee.

A.2.14. The words ■Planning Board• shall mean the ■City of Kinston Planning Board.•

A.2.15. The word ■City• shall mean the ■City of Kinston,• a municipality of the State of North Carolina.

A.2.16. The words ■map,• and ■zoning map• shall mean the ■Official Zoning Map for the City of Kinston, North Carolina.•

A.2.17. The words ■Board of Adjustment• shall mean the ■City of Kinston Board of Adjustment.•

SECTION A.3 DEFINITIONS.

A

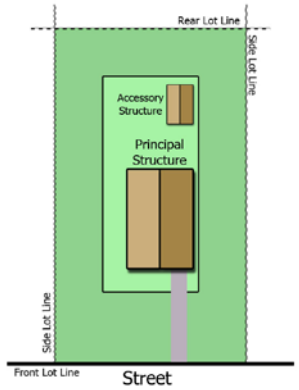
Abandonment
Cessation of use of a wireless support structure for wireless telecommunications activity for at least the minimum period of time specified under this Ordinance.

Abutting
Having property or district lines in common. Lots are also considered to be abutting if they are directly opposite each other and separated by a street or alley.

Access
A way of approaching or entering a property. Access also includes ingress, the right to enter, and egress, the right to leave.

Accessory Equipment
Any equipment serving or being used in conjunction with a Wireless Facility or Wireless Support Structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

Accessory Structure (Appurtenant Structure)
A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.



APPENDIX A. DEFINITIONS

Accessory Use

An activity which is conducted in conjunction with another principal use and the former use (i) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot or (ii) is commonly associated with the principal use and integrally related to it.

Addition (to an existing building)

An extension or increase in the floor area or height of a building or structure.

Administrative Approval

Approval that the UDO Administrator or designee is authorized to grant after Administrative Review.

Administrative Review

Non-discretionary evaluation of an application by the UDO Administrator or designee. This process is not subject to a public hearing.

Adult Arcade

An establishment where, for any form of consideration, one (1) or more motion picture or video projectors, slide projectors or similar machines for viewing by five (5) or fewer persons each are used to show films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas, as defined hereinafter.

Adult Bookstore

An establishment that has a substantial portion (over 25% of total retail space) of its stock-in-trade and offers for rent, trade or sale, for any consideration, any one (1) or more of the following: 1) books, magazines, periodicals or other printed matter; or photographs, films, motion pictures, video cassettes, slides or other visual representations that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or 2) instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.

Adult Business

Any business activity, club or other establishment which permits any person, employee, member, patron or guest on its premises to exhibit any specified anatomical areas before any other person or persons.

APPENDIX A. DEFINITIONS

Adult Day Care Program

The provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled.

Adult Motion Picture Theater

An establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion twenty-five (25) percent of the total presentation time is devoted to the showing of material characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.

Adult Theater

A theater, concert hall, auditorium or similar establishment characterized by (activities featuring) the exposure of specified anatomical areas or by specified sexual activities.

Agricultural Operations

Agricultural operations include establishments (e.g., farms, ranches, dairies, orchards, hatcheries, broiler houses) primarily engaged in the production of crops, plants, vines, or trees and the keeping, grazing, or feeding of livestock. ■Livestock,• as used here includes, cattle, sheep, goats, hogs, and poultry as well as animal specialties such as horses, rabbits, bees, pets, fur-bearing animals in captivity, and fish in captivity. Agricultural operations also include establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities. Commercial greenhouses and nurseries are classified separately for purposes of this Ordinance. See commercial greenhouse definition.

Antenna

Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

Appeal

A request for a review of the UDO Administrator's interpretation of any provision of this Ordinance.

Applicable Codes *(Amended 11/20/2017)*

The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

Application, Telecommunication Facilities *(Amended 11/20/2017)*

A request that is submitted by an applicant to the City for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, City utility pole, or wireless support structure.

Area of Shallow Flooding

A designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located 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

See Special Flood Hazard Area (SFHA).

Art, Work of

All forms of original creations of visual art including but not limited to: sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic; painting, whether portable or permanently fixed, as in the case of murals; mosiacs; photographs; crafts made from clay, fiber and textiles, wood, glass, metal, plastics, or any other material, or any combination thereof; calligraphy; mixed media composed of any combination of forms or media; unique architectural stylings or embellishments, including architectural crafts; environmental landscaping; or restoration and renovation of existing works of art of historical significance. Signs are not considered artwork.

Artisan's Workshop

An establishment, not exceeding 3,000 square feet of floor area, for the preparation, display, and sale of individually crafted artwork, jewelry, furniture, sculpture, pottery, leathercraft, hand-woven articles, and related items. An artisan's workshop includes an establishment that is engaged in the low-impact manufacturing, assembly, repair, or servicing of industrial, business, or consumer machinery, equipment, products, or by-products. Examples include contractors and building maintenance services and similar uses that perform services off-site, low-impact clothing or textile manufacturing, commercial bakery, food service contractor, movie production facility, printing, publishing, lithography, sign-making, welding, woodworking, arts-based (culinary, dance, art, music, photography) classroom, and other similar uses.

Assisted Living Residence *(Amended 11/20/2017)*

Any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. Settings in which services are delivered may include self-

contained apartment units or single or shared room units with private or area baths. There are three types of assisted living residences: adult care homes, adult care homes that serve only elderly persons, and multi-unit assisted housing with services. As used in this definition, "elderly person" means: (i) any person who has attained the age of 55 years or older and requires assistance with activities of daily living, housing, and services; or (ii) any adult who has a primary diagnosis of Alzheimer's disease or other form of dementia who requires assistance with activities of daily living, housing, and services provided by a licensed Alzheimer's and dementia care unit.

(1) ***Adult Care Home.*** An assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to more than six residents, either directly or for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated trained staff. *(Amended 11/20/2017)*

(2) ***Multi-Unit Assisted Housing with Services.*** An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or other compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. *(Amended 11/20/2017)*

B

Bar

A commercial enterprise whose primary activity is the sale of alcoholic beverages to be consumed on the premises. Bars include taverns, night clubs, private clubs, bottle clubs, and similar facilities serving alcoholic liquor.

Base Flood

The flood having a one (1) percent chance of being equaled or exceeded in any given year. Also known as the 100-year flood.

Base Flood Elevation (BFE)

A determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a *Special Flood Hazard Area*, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the *Freeboard*, establishes the *Regulatory Flood Protection Elevation*.

Base Station *(Amended 11/20/2017)*

A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this ordinance or any equipment associated with a tower. The term includes, but is not limited to, the following:

(1) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(3) Any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraph (1) and (2) above that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(4) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment as described in paragraph (1) and (2) above.

Basement
Any area of the building having its floor subgrade (below ground level) on all sides.

Base Station
A station at a specific site authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics.

Battery Charging Station
An electrical component assembly or cluster or component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed federal, state, and/or local requirements.

Battery Exchange Station
A fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds federal, state, and/or local requirements.

Bed and Breakfast
A private home offering bed and breakfast accommodations to eight (8) or fewer persons per night for a period of less than one (1) week.

Bedrooms *(Amended 11/20/2017)*
As defined by the NC State Building Code.

Board of Adjustment
A local body, created by ordinance, whose responsibility is to hear appeals from decisions of the UDO Administrator and to consider requests for variances from the terms of the Unified Development Ordinance.

Boardinghouse
A residential use consisting of at least one (1) dwelling unit together with more than two (2) rooms that are rented out or are designed or intended to be rented but which rooms, individually or collectively, do not constitute separate dwelling units. A roominghouse or boardinghouse is distinguished from a tourist home in that the former is designed to be occupied by longer term residents (at least month-to-month tenants) as opposed to overnight or weekly guests.

APPENDIX A. DEFINITIONS

Bona Fide Farm

Land being used for farm purposes as defined by NCGS 160A-360(k). Proof that property functions as a farm includes the following: (1) a farm sales tax exemption certificate; (2) a copy of the property tax listing showing that the farm qualifies for the present-use-value property taxation that applies to agricultural, horticultural, and forestry uses; (3) a copy of the farm operator's federal income tax form that demonstrates farm activity; (4) a forestry management plan; or (5) a farm identification number issued by the US Department of Agriculture.

Building

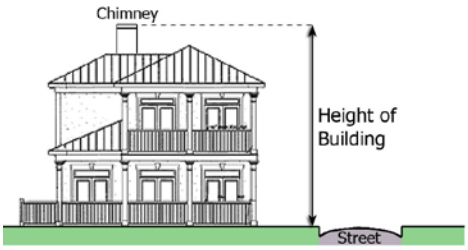
A structure designed to be used as a place of occupancy, storage, or shelter. Also see Structure.

Building, Accessory

See *Accessory Structure (Appurtenant Structure).*

Building, Height Of

The vertical distance from the lowest point of the building, structure, or wall exposed above the ground surface to the highest point of the roof, parapet wall, or uppermost part. Chimneys, vents, or utility service structures shall not be included in the measurement of vertical dimensions.

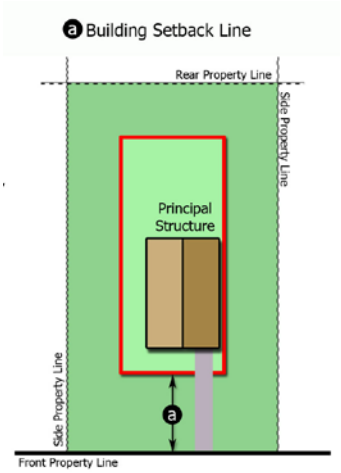


Building, Principal

The primary building on a lot or a building that houses a principal use.

Building Setback Line

A line measured parallel to the front property line in front of which no structure shall be erected.



C

Carrier on Wheels or Cell on Wheels (COW)

A portable self-contained Wireless Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Certificate of Occupancy

Official certification that a premises conforms to provisions of the Zoning Code and Building Code and may be used or occupied. Such a certificate is granted for new construction or for alterations or additions to existing structures or a change in use. Unless such a certificate is issued, a structure cannot be occupied.

Certify

Whenever this Ordinance requires that some agency certify the existence of some fact or circumstance to the city, the city may require that such certification be made in any manner that provides reasonable assurance of the accuracy of the certification. By way of illustration, and without limiting the foregoing, the city may accept certification by telephone from some agency when the circumstances warrant it, or the city may require that the certification be in the form of a letter or other written document or form.

Child Care

A program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption.

Child Care Facility

Includes child care centers, family child care homes, and any other child care arrangement not excluded by NCGS 110-86 (2) that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.

(1) ***Child Care Center.*** An arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.

(2) ***Small Child Care Center.*** Small centers in a residence that are licensed for six to twelve children which may keep up to three additional school age children, depending upon the ages of other children in care. When the group has children of different ages, staff-child ratios and group sizes must be met for the youngest child in the group. *(Amended 11/20/2017)*

(3) ***Family Child Care Home.*** A child care arrangement located in a residence where, at any one time, more than two (2) children, but less than nine (9) children, receive child care.

Chemical Storage Facility
A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Church
Any property or facility whose primary purpose is for engaging in religious practices.

Circulation Area
That portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot. Essentially, driveways and other maneuvering areas (other than parking aisles) comprise the circulation area.

City
The City of Kinston.

City Right-of-Way *(Amended 11/20/2017)*
A right-of-way owned, leased, or operated by the City, including any public street or alley that is not a part of the State highway system.

City Utility Pole *(Amended 11/20/2017)*
A pole owned by the City in the City right-of-way that provides lighting, traffic control, or a similar function.

Coffee House
An informal restaurant primarily offering coffee, tea, and other beverages, and where light refreshments and limited menu meals may also be sold.

Collocation *(Amended 11/20/2017)*
The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, City utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term "collocation" does not include the installation of new utility poles, City utility poles, or wireless support structures.

Commercial Greenhouses and Nurseries
Establishments primarily engaged in the production of ornamental plants and other nursery products such as bulbs, flowers, shrubbery, flower and vegetable seeds and plants, agricultural plants and sod. Such products may be grown under cover or outdoors.

APPENDIX A. DEFINITIONS

Communications Facility *(Amended 11/20/2017)*
The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provided communications service.

Communications Service *(Amended 11/20/2017)*
Cable service as defined in 47 USC § 522(6), information service as defined in 47 USC § 153(24), telecommunications service as defined in 47 USC § 153(53), or wireless services.

Communications Service Provider *(Amended 11/20/2017)*
A cable operator as defined in 47 USC § 522(5); a provider of information service, as defined in 47 USC § 153(24); a telecommunications carrier, as defined in 47 USC § 153(51); or a wireless provider.

Community Garden
A private or public facility for cultivation of fruits, flowers, vegetables, or ornamental plants by more than one person or family, but not for commercial sale.

Concealed Wireless Facility
Any Wireless Facility that is integrated as an architectural feature of an Existing Structure or any new Wireless Support Structure designed to camouflage or conceal the presence of antennas or towers so that the purpose of the Facility or Wireless Support Structure is not readily apparent to a casual observer.

Conditional Use Permit
A permit issued by the City Council that authorizes the recipient to make use of property in accordance with the requirements of this Ordinance as well as any additional requirements imposed by the Council.

Convenience Store
A one-story, retail store containing less than two thousand (2,000) square feet of gross floor area that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a "supermarket"). It is designed to attract and depends upon a large volume of "stop and go" traffic. Illustrative examples of convenience stores are those operated by the "Fast Fare," "7-11" and "Pantry" chains.

Council
The City Council of the City of Kinston.

Developer
A person who is responsible for any undertaking that requires a zoning permit, special use permit, conditional use permit, or sign permit.

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, or storage of equipment or materials.

Development Activity
Above activity which will necessitate a Floodplain Development Permit.

Dimensional Nonconformity
A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

Disposal
As defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Distillery
A distillery as permitted by NCGS is an enterprise which engages in one or more of the following:

(1) Manufacture, purchase, import, possess and transport ingredients and equipment used in the distillation of spirituous liquor;
(2) Sell, deliver and ship spirituous liquor in closed containers at wholesale to exporters and local boards within the State, and, subject to the laws of other jurisdictions, at wholesale or retail to private or public agencies or establishments of other states or nations;
(3) Transport into or out of the distillery the maximum amount of liquor allowed under federal law, if the transportation is related to the distilling process.

Drawings, Construction

Drawings utilized during construction prepared by an architect, landscape architect, engineer, or surveyor licensed to practice in North Carolina.

Drawings, As-Built

Engineering plans prepared after the completion of construction, by the engineer by an architect, landscape architect, engineer, or surveyor licensed to practice in North Carolina, in such a manner as to accurately identify and depict the location of all on-site improvements, which includes but is not limited to all structures, parking facilities, detention/retention areas, curbs, gutters, and sidewalks.

Driveway

That portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area.

Drug Rehab Facility

A nonresidential facility providing counseling and other medical or rehabilitation services to individuals who have been recognized as having an addiction to illegal drugs.

Dwelling, Multi-Family

A residential use consisting of a building containing three (3) or more dwelling units. For purposes of this definition, a building includes all dwelling units that are enclosed within that building or attached to it by a common floor or wall (including without limitation the wall of an attached garage or porch).

Dwelling, Primary with Accessory Apartment

A residential use having the external appearance of a single-family residence but in which there is located a second dwelling unit that comprises not more than twenty-five (25) percent of the gross floor area of the building nor more than a total of seven hundred fifty (750) square feet.

Dwelling, Single-Family

A residential use consisting of a single detached building containing one (1) dwelling unit located on a lot containing no other dwelling units.

Dwelling, Two-Family (Duplex)

A two-family residential use in which the dwelling units share a common wall (including, without limitation, the wall of an attached garage or porch) and in which each dwelling unit has living space on the ground floor and a separate, ground floor entrance.

Dwelling Unit
An enclosure containing sleeping, kitchen, and bathroom facilities designed for and used or held ready for use as a permanent residence by one (1) family.

E

Easement
A grant by the property owner of a strip of land for a specified purpose and use by the public, a corporation, or persons.

Effective Date of this Ordinance
Whenever this Ordinance refers to the effective date of this Ordinance, the reference shall be deemed to include the effective date of any amendments to this Ordinance if the amendment, rather than this Ordinance as originally adopted, creates a nonconforming situation.

Electric Vehicle
Any vehicle that operates, either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on-board for energy purpose. Electric vehicle includes: (1) a battery powered electric vehicle; and (2) a plug-in hybrid electric vehicle.

Electric Vehicle Charging Station
A public or private parking space located together with a battery charging station which permits the transfer of electric energy (by conductive or inductive means) to a battery or other storage device in an electric vehicle. An electric vehicle charging station is permitted as an accessory use to any principal use.

Electric Vehicle Parking Space
Any marked parking space that identifies the use to be exclusively for an electric vehicle.

Electrical Transmission Tower
An electrical transmission structure used to support high voltage overhead power lines. The term shall not include any Utility Pole.

Elevated Building
A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Eligible Facilities Request *(Amended 11/20/2017)*

Any request for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(1) collocation of new transmission equipment;
(2) removal of transmission equipment; or
(3) replacement of transmission equipment.

Eligible Support Structure *(Amended 11/20/2017)*
Any tower or base station as defined in this ordinance, provided that it is existing at the time the relevant application is filed with the State or local government under this ordinance.

Encroachment
The advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Energy Generating Facility
A facility that uses a variety of sources and/or products for the production of power. Energy facilities may include, but are not limited to: petroleum; methane; ethanol; thermal; wind; solar; hydro-electric; and other energy generation facilities.

Equipment Compound
An area surrounding or near the base of a Wireless Support Structure within which a wireless facility is located.

Event *(Amended 11/20/2017)*
Any organized activity, celebration, etc., for members of the general public or a particular group or social/commercial event.

Evidentiary Hearing
The formal hearing required to gather evidence prior to making a quasi-judicial zoning decision. All of the essential elements of a fair trial shall be observed, such as having witnesses under oath and subject to cross-examination, no gathering of evidence outside the hearing, written findings of fact, and substantial, competent, and material evidence in the record to support the findings.

Existing Manufactured Home Park or Manufactured Home 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 pads)

was completed before the initial effective date of the floodplain management regulations adopted by the community.

Existing Structure *(Amended 11/20/2017)*
A constructed tower or base station is existing for purposes of this ordinance if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

Expenditure
A sum of money paid out in return for some benefit or to fulfill some obligation. The term also includes binding contractual commitments to make future expenditures, as well as any other substantial changes in financial position.

Extraterritorial Planning Area
That portion of the city's planning jurisdiction that lies outside the corporate limits of the city.

F

Fall Zone
The area in which a Wireless Support Structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

Family
One (1) or more persons living together as a single housekeeping unit.

Family Care Home *(Amended 11/20/2017)*
A home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident persons with disabilities. "Persons with disabilities" means a person with a temporary or permanent physical, emotional, or mental disability, including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in NCGS Section 122C-3(11)b.

Family Foster Home
The private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed

there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship, or adoption.

Farm, Craft, Produce Market

An occasional or periodic market held in an open area or in a structure where groups of individual sellers offer for sale to the public such items as fresh produce, seasonal fruits, fresh flowers, arts and crafts items, and food and beverages (but not to include second-hand goods) dispensed from booths located on-site.

Farm Stand

A temporary open air stand or place for the seasonal selling of agricultural produce. A produce stand is portable and capable of being dismantled or removed from the sales site.

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/or
(2) the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM)

An official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

Flood Hazard Boundary Map (FHBM)

An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

Flood Insurance

The insurance coverage provided under the National Flood Insurance Program.

Flood Insurance Rate Map (FIRM)

An official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Flood Insurance Study (FIS)

An examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

Flood Prone Area
See Floodplain.

Flood Zone
A geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

Floodplain
Any land area susceptible to being inundated by water from any source.

Floodplain Administrator
The individual appointed to administer and enforce the floodplain management regulations.

Floodplain Development Permit
Any type of permit that is required in conformance with the provisions of the Flood Damage Prevention Regulations, prior to the commencement of any development activity.

Floodplain Management
The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Management Regulations
Article 9, Part IX of this Ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing
Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

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 (1) foot.

Floodway Encroachment Analysis

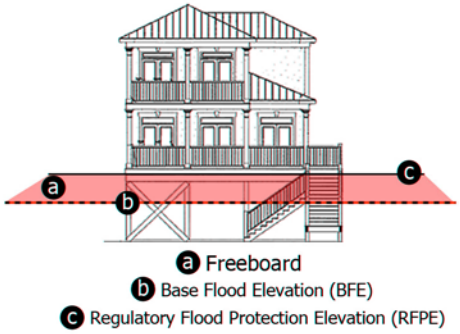
An engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway or non-encroachment boundaries and base flood elevations; the evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

Floor

The top surface of an enclosed area in a building (including basement); i.e., top of slab in concrete slab construction or top of wood flooring in a frame construction. The term does not include the floor of a garage used solely for parking vehicles.

Freeboard

The height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater that the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the *Regulatory Flood Protection Elevation*.



Food Trucks *(Amended 11/20/2017)*

A large vehicle equipped with facilities for cooking and selling food.

Functionally Dependent Facility

A facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

G

Gameroom

A use providing video games or other games for playing for amusement and recreation. Any table games such as air hockey, football, pinball, or the like shall be included under this definition. More than three (3) such games shall constitute a primary use and shall be allowed only in those zoning districts permitting gamerooms as a listed permitted use or by a conditional use permit. Three (3) or fewer such games shall constitute an accessory use and may be permitted in any licensed retail business.

Granny Pods *(Amended 11/20/2017)*

A temporary structure that will house a single mentally or physically impaired person in accordance with NCGS 160A-383.5. The statute defines these to be North Carolina residents who require assistance with two or more activities of daily living (bathing, dressing, personal hygiene, ambulation, transferring, toileting, and eating). The impairment must be certified in writing by a physician licensed in North Carolina.

Group Home

A home with support and supervisory personnel that provides room and board, personal care and habilitation services for not more than six resident persons with mental illnesses such as dementia, bipolar disorder, anxiety disorder, clinical depression, or schizophrenia.

Gross Floor Area

The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

H

Hazardous Waste Management Facility

As defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest Adjacent Grade (HAG)

The highest natural elevation of the ground surface, prior to construction, immediately 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 US 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 local inventory of historic landmarks in communities with a *Certified Local Government (CLG) Program*; or
(4) certified as contributing to the historical significance of a historic district designated by a community with a *Certified Local Government (CLG) Program*.

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Homeless Shelter

A facility owned or operated by an agency for persons who are in need of temporary housing due to various unusual circumstances.

Home Occupation

A commercial activity that: (i) is conducted by a person within the primary residence on the same lot (in a residential district) where such person resides and (ii) is not so insubstantial or incidental or is not so commonly associated with the residential use as to be regarded as an accessory use, but that can be conducted without any significantly adverse impact on the surrounding neighborhood. Home occupations may include the growing of fruits, vegetables, and flowers for on-premise sales.

Without limiting the generality of the foregoing, a use may be regarded as having a significantly adverse impact on the surrounding neighborhood if: (i) goods, stock in trade, or other commodities are displayed; (ii) any on-premises retail sales occur; (iii) any person not a resident on the premises is employed in connection with the purported home occupation; (iv) it creates objectionable noise, fumes, odor, dust or electrical interference; (v) more than twenty-five (25) percent of the total gross floor area of the principal residence or more than five hundred (500) square feet of gross floor area (whichever is less) is used for home occupation purposes; or (vi) materials and/or equipment are stored outside.

I

Inoperable Vehicle

Any vehicle, designed to be self-propelled, which by virtue of broken or missing component parts, is no longer capable of self-propulsion. For the purpose of this Ordinance, any vehicle which is registered with the North Carolina Department of Motor Vehicles and has a current North Carolina motor vehicle registration license affixed to it shall not be considered inoperable.

J

Junkyard

An establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk or for maintenance or operation of a used car junkyard and shall include

sanitary landfills. The open storage of one (1) or more wrecked or inoperable vehicles or parts of one (1) or more vehicles for ten (10) days or more shall be deemed a junkyard. An unlicensed vehicle stored for ten (10) days or more shall be deemed an inoperable vehicle.

K

Kennel

A commercial operation that: (i) provides food and shelter and care of animals for purposes not primarily related to medical care (a kennel may or may not be run by or associated with a veterinarian), (ii) engages in the breeding of animals for sale, or (iii) engages in the training or breeding of animals.

L

Loading and Unloading Area

That portion of the vehicle accommodation area used to satisfy the requirements of Article 9, Part III.

Lot

A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title.

If a public body or any authority with the power of eminent domain condemns, purchases, or otherwise obtains fee simple title to or a lesser interest in a strip of land cutting across a parcel of land otherwise characterized as a lot by this definition, or a private road is created across a parcel of land otherwise characterized as a lot by this definition, and the interest thus obtained or the road so created is such to effectively prevent the use of this parcel as one (1) lot, then the land on either side of this strip shall constitute a separate lot.

Subject to Section 8.4, the permit-issuing authority and the owner of two (2) or more contiguous lots may agree to regard the lots as one (1) lot if necessary or convenient to comply with any of the requirements of this Ordinance.

Lot Area

The total area circumscribed by the boundaries of a lot, except that: (i) when the legal instrument creating a lot shows the boundary of the lot extending into a public street right-of-way, then the lot boundary for purposes of computing the lot area shall be the street right-of-way line, or if the right-of-way line cannot be determined, a line running parallel to and thirty (30) feet from the

center of the traveled portion of the street, and (ii) in a residential district, when a private road that serves more than three (3) dwelling units is located along any lot boundary, then the lot boundary for purposes of computing the lot area shall be the inside boundary of the traveled portion of that road.

Lowest Adjacent Grade (LAG)

The elevation of the ground, sidewalk, or patio slab immediately next to the building, or deck support, after completion of the building.

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 limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

M

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 manufactured home does not include a recreational vehicle.

Manufactured Home, Class A

A dwelling unit constructed with one (1) or more components which are prefabricated and hauled to the site that are capable of producing a dwelling which is indistinguishable from conventionally built homes and which meets the construction requirements of the North Carolina Uniform Residential Building Code, as amended.

Manufactured Home, Class B

A dwelling unit that:

(1) Is not constructed in accordance with the requirements of the North Carolina Uniform Residential Building Code, as amended; and

(2) Is composed of two (2) or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site; and

(3) Meets or exceeds the construction standards of the US Department of Housing and Urban Development; and

(4) Conforms to the following appearance criteria:

- The manufactured home has a minimum width, as assembled on the site, of twenty (20) feet;
- The pitch of the manufactured home's roof has a minimum vertical rise of three (3) inches for each twelve (12) inches of horizontal run and the roof is finished with asphalt or fiberglass shingles;
- The exterior siding of the manufactured home is of a color, material, and scale comparable with those in the immediate vicinity, and in no case does the degree of reflectivity of the exterior finish exceed that of gloss white paint;
- A continuous, permanent masonry or corrosive-resistant, nonreflective curtain wall, unpierced except for required ventilation and access installed under the manufactured home; and
- The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.

Manufactured Home, Class C

Any manufactured home that does not meet the definitional criteria of a Class A or Class B manufactured home but which, at a minimum, exceeds forty (40) feet in length and eight (8) feet in width.

Manufactured Home Park

Land used or intended to be used, leased, or rented for occupancy by six (6) or more Class B or Class C manufactured homes, anchored in place by a foundation or other stationary support, to be used for living purposes and accompanied by automobile parking spaces and incidental utility structures and facilities required and provided in connection therewith. This definition shall not include trailer sales lots on which unoccupied trailers are parked for purposes of inspection and sale. Specific requirements for manufactured home parks are outlined in Section 7.19.

Manufactured Home Subdivision

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Manufactured Structure, Commercial

A prefabricated building constructed and designed for transportation on its own chassis or by truck after fabrication and intended for other than residential use. These structures shall be constructed to meet the standards of the North Carolina Building Code. A converted manufactured home does not meet these criteria. A commercial manufactured structure meeting these standards shall be allowed for permanent placement for commercial and industrial uses.

Market Value

The building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

Massage

Any manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping, by hand or mechanical device.

Massage Business

Any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios or massage parlors. No provision of this section, however, shall apply to any bona fide therapeutic massage service provided by a licensed or registered medical professional or other person certified by a state or nationally recognized organization; nor shall this section apply to any private or public fitness center or nonprofit community recreational fitness and service organization, either of which provides massage therapy as a service incidental to the operation of a fitness center.

Mean Sea Level

For purposes of this Ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

Microbrewery

A facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail, or wholesale, on or off premise.

Micro Wireless Facility *(Amended 11/20/2017)*

A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Monopole

A single, freestanding pole-type structure supporting one or more Antennas. For the purposes of this Ordinance, a Monopole is not a Tower or a Utility Pole.

Multi-Phased Development *(Amended 11/20/2017)*

A development containing 100 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committee elements, including a requirement to offer land for public use as a condition of its master development plan approval.

N

New Construction

Structures for which the start of construction commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

Noncompatible Use

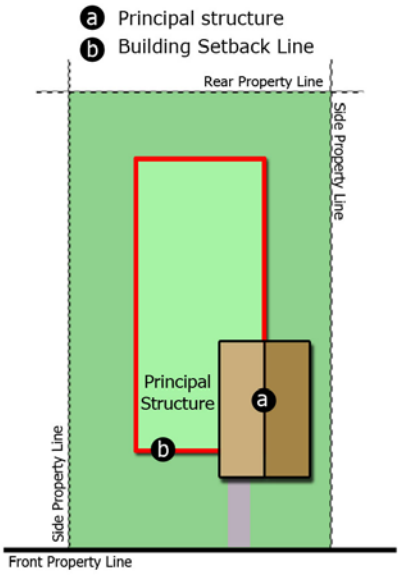
A use or service which is unsuitable for direct association and/or contiguity with certain other uses because it is contradictory, incongruous, or discordant.

Nonconforming Lot

A lot existing at the effective date of this Ordinance (and not created for the purposes of evading the restrictions of this Ordinance) that does not meet the minimum area or dimensional requirement of the district in which the lot is located.

Nonconforming Project

Any structure, development, or undertaking that is incomplete on the effective date of this Ordinance and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.



Nonconforming Situation

A situation that occurs when, on the effective date of this Ordinance, any existing lot or structure or use of an existing lot or structure does not conform to one (1) or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this Ordinance, because signs do not meet the

requirements of this Ordinance (Article 9, Part IV), or because land or buildings are used for purposes made unlawful by this Ordinance.

Nonconforming Use

A situation occurring when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use.) The term also refers to the activity that constitutes the use made of the property. (For example, all the activity associated with operating a bakery in a residentially zoned area constitutes a nonconforming use.)

Non-Encroachment Area

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 (1) foot as designated in the Flood Insurance Study report.

Nursing Home

A facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A nursing home is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A nursing home provides care for persons who h ave remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

O

Official Maps or Plans

Any maps or plans officially adopted by the City Council.

Open Space

An area (land and/or water) generally lacking in man-made structures and reserved for enjoyment in its unaltered state.

Ordinary Maintenance

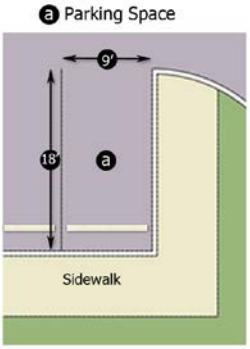
Ensuring that Wireless Facilities and Wireless Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing, and modifications that maintain functional capacity and structural integrity; for example, the strengthening of a Wireless Support Structure's foundation or of the Wireless Support Structure itself. Ordinary Maintenance includes

replacing Antennas of a similar size, weight, shape, and color and Accessory Equipment within an existing Equipment Compound and relocating the Antennas to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Substantial Modifications.

P

Parking Area Aisles
That portion of the vehicle accommodation area consisting of lanes providing access to parking spaces.

Parking Space
A portion of the vehicle accommodation area set aside for the parking of one (1) vehicle.



Person
An individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization, or other legal entity acting as a unit.

Photovoltaic Power
An active solar energy system that converts solar energy directly into electricity.

Planned Residential Development
A development constructed on a tract of at least five (5) acres under single ownership, planned and developed as an integral unit, and consisting of single-family detached residences combined with either two-family residences or multi-family residences, or both, all developed in accordance with Section 7.20.

Planned Unit Development
A development constructed on a tract of at least twenty-five (25) acres under single ownership, planned and developed as an integral unit, and consisting of a combination of residential and nonresidential uses on land within a PUD district in accordance with Section 7.21.

Planning Board
The public agency in a community usually empowered to prepare a comprehensive plan and to evaluate proposed changes in land use, either by public or private developers, for conformance with the plan.

Planning Jurisdiction
The area within the city limits and the area beyond the city limits within which the city is authorized to plan for and regulate development, as set forth in Section 1.3.

Post-FIRM
Construction or other development for which the start of construction occurred on or after the effective date of the initial Flood Insurance Rate Map.

Pre-FIRM
Construction or other development for which the start of construction occurred before the effective date of the initial Flood Insurance Rate Map.

Principally Above Ground
That at least 51% of the actual cash value of the structure is above ground.

Public Safety and/or Nuisance
Anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Public Water Supply System
Any water supply system furnishing potable water to ten (10) or more dwelling units or businesses or any combination thereof.

Q

Quasi-Judicial Decisions
Those decisions that require the finding of facts and the application of standards that involve judgment and discretion. Examples include conditional use permits and variances.

R

Recreational Vehicle (RV)
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.

Reference Level
The top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone AE, A, A99 or AO.

Regulatory Flood Protection Elevation
The Base Flood Elevation plus the Freeboard. In Special Flood Hazard Areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard (residential construction only). In Special Flood Hazard Areas where no BFE has been established, this elevation shall be at least four (4) feet above the highest adjacent grade.

Remedy a Violation
To bring the structure or other development into compliance with State and community floodplain 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 ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Replacement Pole
Pole of equal proportions and of equal height or such other height that would not constitute a Substantial Modification to an Existing Structure in order to support Wireless Facilities or to accommodate Collocation. Requires removal of the Wireless Support Structure it replaces.

Residential Child-Care Facility *(Amended 11/20/2017)*
A staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child-caring institutions, group homes, and children's camps which provide foster care, but not family care homes.

Restaurant
A commercial enterprise whose primary activity is the sale of prepared meals.

Riverine
Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Road
All private ways used to provide motor vehicle access to (i) two (2) or more lots or (ii) two (2) or more distinct areas or buildings in unsubdivided developments.

Roominghouse

See Boardinghouse.

Rowhouse

More than two dwelling units located on separate lots placed side by side but sharing some structural parts at a common property line.

S

Salvage Yard

Any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

Satellite Dish Antenna or Satellite Earth Station

An antenna and attendant processing equipment for reception of electronic signals from satellites.

Search Ring

The area within which a Wireless Support Facility or Wireless Facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Self-Service Storage Facility

A building or group of buildings in a controlled access and/or fenced compound that contains varying sizes of individual, compartmentalized, and controlled access stalls or lockers for the dead storage of customers' goods or wares.

Setback

The required distance between every structure and the lot lines of the lot on which it is located.

Sexually Oriented Business

Any business activity, club or other establishment, within which the exhibition, showing, rental, trade or sale of materials distinguished or characterized by an emphasis on material depicting, describing or exhibiting specified anatomical areas or relating to specified sexual activities is permitted. Sexually oriented businesses shall include, but are not limited to: adult arcades, adult bookstores, adult motion picture theaters, adult theaters and massage parlors, as defined by this Ordinance.

Shadow Flicker

The visible flicker effect when rotating turbine blades cast shadows on the ground and nearby structures causing the repeating pattern of light and shadow.

Shopping Center
A group of commercial establishments planned, developed, and managed as a unit with a unified design of buildings and with coordinated parking and service areas all located on a parcel of land containing a minimum of two (2) acres.

Sign
Any device that (i) is sufficiently visible to persons not located on the lot where such device is located to accomplish either of the objectives set forth in subdivision two of this definition; and (ii) is designed to attract the attention of such persons or to communicate information to them.

Sign, A-Frame (aka Sandwich Board Signs or Sidewalk Signs) *(Amended 11/20/2017)*
A freestanding sign ordinarily in the shape of an "A" or some variation thereof, which is readily moveable and not permanently attached to the ground or any structure.

Sign, Balloon or Inflatable *(Amended 11/20/2017)*
A sign that is an air-inflated object, which may be of various shapes, made of flexible fabric, resting on the ground or a structure and equipped with a portable blower motor that provides a constant flow of air into the device. Balloon signs are restrained, attached, or held in place by a cord, rope, cable, or similar method.

Sign, Banner *(Amended 11/20/2017)*
A temporary sign composed of cloth, canvas, plastic, fabric, or similar light-weight, nonrigid material that can be mounted to a structure with cord, rope, cable, or a similar method or that may be supported by stakes in the ground.

Sign, Canopy or Awning
Any sign that is a part of or attached to an awning, canopy, or other structural protective covering above a door, entrance, window, or walkway.

Sign, Feather Flag *(Amended 11/20/2017)*
A freestanding temporary sign typically constructed of a single plastic or metal shaft driven in the ground with an attached pennant that is vertically elongated and attached to the shaft.

Sign, Flag *(Amended 11/20/2017)*
A device generally made of flexible material, usually cloth, paper or plastic, typically used as a symbol of a government, school, or religion. The term "Flag" does not include feather flag signs.

Sign, Freestanding

A sign that is attached to, erected on, or supported by some structure (such as a pole, mast, frame, or other structure) that is not itself an integral part of or attached to a building or other structure having a principal function is something other than the support of a sign.

Sign, Ground Mounted

A sign suspended or supported by one or more uprights or braces anchored in the ground with no more than 30 inches clearance from the bottom of the sign to the ground below.

Sign, ID Plaque

A sign giving only the nature, logo, trademark, or other identifying symbol, address, or any combination of the name, symbol, and address of a building, business, development, or establishment.

Sign, Internally Illuminated

A sign where the source of the illumination is inside the sign and light emanates through the message of the sign rather than being reflected off the surface of the sign from an external source. Without limiting the generality of the foregoing, signs that consist of or contain tubes that (i) are filled with neon or some other gas that glows when an electric current passes through it and (ii) are intended to form or constitute all or part of the message of the sign rather than merely providing illumination to other parts of the sign that contain the message shall also be considered internally illuminated signs.

Sign, Monument

A freestanding sign supported primarily by an internal structural framework or integrated into landscaping or other solid structural features other than support poles.

Sign, Nonconforming

A sign that, on the effective date of this Ordinance, does not conform to one (1) or more of the regulations set forth in this Ordinance, particularly Article 9, Part IV, Signs.

Sign, Off-Premises

A sign that draws attention to or communicates information about a business, service, commodity, accommodation, attraction, or other activity that is conducted, sold, or offered at a location other than the premises on which the sign is located (includes billboards).

Sign Permit

A permit issued by the UDO Administrator that authorizes the recipient to erect, move, enlarge, or substantially alter a sign.

Sign, Portable *(Amended 11/20/2017)*

Any sign not permanently attached to the ground or other permanent structure, or a sign designed to e transported.

Sign, Projecting

A sign which is attached to and projects more than twelve (12) inches from a building face or wall.

Sign, Snipe

A temporary sign illegally tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or other objects.

Sign, Temporary

A sign that (i) is used in connection with a circumstance, situation, or event that is designed, intended or expected to take place or to be completed within a reasonably short or definite period after the erection of such sign, or (ii) is intended to remain on the location where it is erected or placed for a period of not more than fifteen (15) days. If a sign display area is permanent but the message displayed is subject to periodic changes, that sign shall not be regarded as temporary.

Sign, Vehicle

Any sign permanently or temporarily attached to or placed on a vehicle or trailer in any manner so that the sign is used primarily as a stationary sign.

Sign, Wall

Any sign attached to, painted on, or erected against any wall of a building or structure so that the exposed face of the sign is on a plane parallel to the plane of said wall and which does not extend more than twelve (12) inches from the wall. Wall sign also includes any sign erected against, installed on or painted on a penthouse above the roof of a building as long as the wall of the penthouse is on a plane parallel to the wall of the building. Wall sign also includes a sign attached to, painted on, or erected against a false wall or false roof that does not vary more than thirty (30) degrees from the plane of the adjoining wall elevation.

Sign, Window

Any sign, picture, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, sale, or service that is placed inside a window, or upon the window panes or glass, and is visible from the exterior of the window. For the purposes of this Ordinance, a sign that rests against a window, a sign that is separated from the window by a bumper pad, or a sign that is placed within two inches of the window through the use of a hanging device, shall also be considered a window sign.

Site Plan

A plan, to scale, showing uses and structures proposed for a parcel of land as required by the regulations involved. It includes lot lines, streets, building sites, reserved open space, buildings, major landscape features both natural and manmade and, depending on requirements, the location of proposed utility lines.

Site *(Amended 11/20/2017)*

For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

Site Plan, Major

All site plans not meeting the requirements for a minor site plan.

Site Plan, Minor

Includes the following:

- Buildings or additions with an aggregate enclosed square footage of less than 20,000 square feet;
- Buildings or additions involving land disturbance of less than one (1) acre;
- Multi-family development involving less than ten (10) dwelling units;
- Parking lot expansions which comply with this Ordinance with no increase in enclosed floor area;
- Revision to landscaping, signage, or lighting which comply with the requirements of this Ordinance;
- Accessory uses which comply with the requirements of this Ordinance; and
- Site plans which do not require a variance or modification of the requirements of this Ordinance, and otherwise comply with this Ordinance.

Solar Collector (Accessory)
Any solar device that absorbs and accumulates solar radiation for use as a source of energy. The device may be roof-mounted or ground-mounted as an accessory use.

Solar Energy
Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy System
A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generating, or water heating. Solar Energy Systems may include, but not be limited to, solar farms and any of several devices that absorb and collect solar radiation for use as a source of energy as an accessory use.

Solar Farm
An area of land designated use for the sole purpose of deploying photovoltaic power and generating electric energy.

Solid Waste Disposal Facility
Any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

Solid Waste Disposal Site
As defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Special Events
Circuses, fairs, carnivals, festivals, or other types of special events that (i) run for longer than two (2) days but not longer than two (2) weeks, (ii) are intended to or likely to attract substantial crowds, and (iii) are unlike the customary or usual activities generally associated with the property where the special event is to be located.

Special Flood Hazard Area (SFHA)
The land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Section 9.99.2 of this Ordinance.

Specified Anatomical Areas
Less than completely and opaquely covered human genitals, pubic regions, buttocks and female breasts below a point immediately above the top of the areola.

Specified Sexual Activities

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

Spot Zoning *(Amended 11/20/2017)*

The zoning of a relatively small area of land differently from the way the majority of the surrounding land is zoned. Spot zoning is legal only if the government establishes that it is reasonable. Reasonableness is determined by considering the size of the area; any special conditions or factors regarding the area; the consistency of the zoning with the land use plan; the degree of change in the zoning; the degree it allows uses different from the surrounding area; and the relative benefits and detriments for the owner, the neighbors, and the surrounding community. The City of Kinston should consider the following factors in deliberating any potential spot zoning:

(1) *The Size and Nature of the Tract.* The larger the area of spot zoning the more likely it is to be reasonable. Singling out an individual lot for special zoning treatment is more suspect than creating a zoning district that involves multiple parcels and owners. Special site characteristics, such as topography, availability of utilities, or access to rail or highways, can be important in this analysis.
(2) *Compatibility with Existing Plans.* If a clear public policy rationale for the different zoning treatment is set out in the local government's adopted plans, that evidences a public purpose for the zoning. By contrast, a zoning action that is inconsistent with a plan may indicate special treatment that is contrary to the public interest and thus be unreasonable.
(3) *The Impact of the Zoning Decision on the Landowner, the Immediate Neighbors, and the Surrounding Community.* An action that is of great benefit to the owner and only a mild inconvenience for the neighbors may be reasonable, while a zoning decision that significantly harms the neighbors while only modestly benefitting the owner would be unreasonable.
(4) *The Relationship between the Newly Allowed Uses in a Spot Rezoning and the Previously Allowed Uses.* The degree of difference in the existing surrounding land uses and the proposed new use is also important. The greater the difference in allowed uses, the more likely the rezoning will be found unreasonable. For example, in an area previously zoned for residential uses, allowing slightly higher residential density may be reasonable while allowing industrial uses would be unreasonable.

(5) *Ownership.* In order to constitute spot zoning, the area to be rezoned must be owned by a single owner.

Start of Construction

Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the 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 preparation, 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. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Storage Yards (including Automobile Salvage Yards)

An open space surrounded by a wall or fence of such characteristics as will provide an obscuring screen of not less than seven (7) feet in height. No goods, materials or vehicles shall be stored outside the enclosed storage area.

Street

A public street or a street with respect to which an offer of dedication has been made.

Street, Arterial

A major street in the city's street system that serves as an avenue for the circulation of traffic onto, out, or around the city and carries high volumes of traffic.

Street, Collector

A street whose principal function is to carry traffic between minor, local, and subcollector streets and arterial streets but that may also provide direct access to abutting properties. It serves or is designed to serve, directly or indirectly, more than one hundred (100) dwelling units and is designed to be used or is used to carry more than eight hundred (800) trips per day.

Street, Cul-De-Sac.

A street that terminates in a vehicular turnaround.

Street, Local

A street whose sole function is to provide access to abutting properties. It serves or is designed to serve at least ten (10) but not more than twenty-five (25) dwelling units and is expected to or does handle between seventy-five (75) and two hundred (200) trips per day.

Street, Marginal Access

A street that is parallel to and adjacent to an arterial street and that is designed to provide access to abutting properties so that these properties are somewhat sheltered from the effects of the through-traffic on the arterial street and so that the flow of traffic on the arterial street is not impeded by direct driveway access from a large number of abutting properties.

Street, Minor

A street whose sole function is to provide access to abutting properties. It serves or is designed to serve not more than nine (9) dwelling units and is expected to or does handle up to seventy-five (75) trips per day.

Street, Subcollector

A street whose principal function is to provide access to abutting properties but is also designed to be used or is used to connect minor and local streets with collector or arterial streets. Including residences indirectly served through connecting streets, it serves or is designed to serve at least twenty-six (26) but not more than one hundred (100) dwelling units and is expected to or does handle between two hundred and eight hundred trips per day.

Structure

A walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

Subdivider

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

Subdivision

The division of a tract of land into two (2) or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and including all divisions 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 of this chapter applicable strictly to subdivisions: (i) the combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or

exceed the minimum standards set forth in this chapter; (ii) the division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved; or (iii) the public acquisition by purchase of strips of land for widening or opening streets; or (iv) the division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the minimum standards set forth in this Ordinance.

Subdivision, Major
Any subdivision other than a minor subdivision.

Subdivision, Minor
A subdivision that does not involve any of the following: (i) the creation of more than a total of three (3) lots; (ii) the creation of any new public streets; (iii) the extension of a public water or sewer system; or (iv) the installation of drainage improvements through one (1) or more lots to serve one (1) or more other lots.

Substantial Change *(Amended 11/20/2017)*
A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(1) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(2) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet.

(3) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed

four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure.

(4) It entails any excavation or deployment outside the current site.

(5) It would defeat the concealment elements of the eligible support structure.

(6) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs 1-4 above.

Substantial Damage

Damage of any origin sustained by a structure during any one-year period 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 damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Substantial Improvement

Any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(1) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Section 4.4.2 of this Ordinance.

T

Temporary Storage Facility

Any container intended for storing or keeping household goods, other personal property or business related goods intended to be filled, refilled, or emptied while located outdoors and later removed from the property for storage or disposal off-site. Temporary storage facilities are sometimes also known as portable storage units or portable storage containers.

Temporary Emergency, Construction, or Repair Residences

A residence (which may be a manufactured home) that is: (i) located on the same lot as a residence made uninhabitable by fire, flood, or other natural disaster and occupied by the persons displaced by such disaster, or (ii) located on the same lot as a residence that is under construction or undergoing substantial repairs or reconstruction and occupied by the persons intending to live in such permanent residence when the work is completed; or (iii) located on a nonresidential construction site and occupied by persons having construction or security responsibilities over such construction site. (See Section 7.22).

Therapeutic Foster Home

A family foster home where, in addition to the provision of foster care, foster parents who receive appropriate training provide a child with behavioral health treatment services under the supervision of a county department of social services, an area mental health program, or a licensed private agency.

Tiny House *(Amended 11/20/2017)*

A single-family detached home that is 200 square feet to 600 square feet in size (not including loft space) and complies with the North Carolina State Building Code. A tiny house on wheels for permanent occupancy (longer than 30 days) is not considered a recreational vehicle.

Tower *(Amended 11/20/2017)*

Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

Tract

A lot (see "Lot" definition). The term tract is used interchangeably with the term "lot," particularly in the context of subdivisions, where one "tract" is subdivided into several "lots."

Transmission Equipment *(Amended 11/20/2017)*

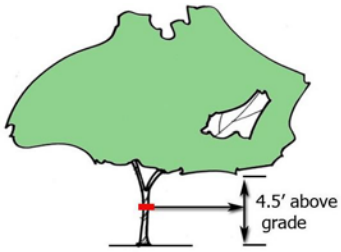
Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Travel Trailer

A structure that (i) is intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle) and (ii) is designed for temporary use as sleeping quarters but that does not satisfy one (1) or more of the definitional criteria of a mobile home.

Tree Diameter at Breast Height (DBH)

The diameter of a tree trunk in inches measured at four and one-half feet above the ground.



Tree, Protected

An existing healthy tree which, when measured at four and one-half feet above the ground, has a minimum diameter of eight inches.

Tree, Specimen

A tree of at least 36 inches measured at DBH.

U

UDO Administrator

Except as otherwise specifically provided, primary responsibility for administering and enforcing this Ordinance may be assigned to one (1) or more individuals by the City Manager or Planning Director. The person or persons to whom these functions are assigned shall be referred to in this Ordinance as the ■UDO Administrator• or ■Administrator.• The term ■staff• or ■planning staff• is sometimes used interchangeably with the term ■Administrator.•

Use

The activity or function that actually takes place or is intended to take place on a lot.

Use, Principal

A use listed in the Table of Uses and Activities, Section 6.5.

Utility Facilities
Any aboveground structures or facilities (other than buildings, unless such buildings are used as storage incidental to the operation of such structures or facilities) owned by a governmental entity, a nonprofit organization, corporation, or any entity defined as a public utility for any purpose by NCGS 62-3 and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas, oil, or electronic signals.

Utility Facilities, Community or Regional
All utility facilities other than neighborhood facilities.

Utility Facilities, Neighborhood
Utility facilities that are designed to serve the immediately surrounding neighborhood and that must, for reasons associated with the purpose of the utility in question, be located in or near the neighborhood where such facilities are proposed to be located.

Utility Pole *(Amended 11/20/2017)*
A structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, electricity, lighting, or wireless services.

V

Variance
An authorization to do something contrary to the strict terms of the zoning regulations and intent of this Ordinance, such as building a structure inside a required setback area. Variances are quasi-judicial decisions that require an evidentiary hearing. They may only be issued upon a finding of practical difficulty or unnecessary hardships as a result of strict compliance and that the variance would be consistent with the spirit, purpose, and intent of the Ordinance. Variance petitions are usually assigned to the Board of Adjustment for hearing and decision.

Vehicle Accommodation Area
That portion of a lot that is used by vehicles for access, circulation, parking, and loading and unloading. It comprises the total of circulation areas, loading and unloading areas, and parking areas (spaces and aisles).

Violation
The failure of a structure or other development to be fully compliant with this Ordinance.

W

Water Surface Elevation (WSE)
The height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

Water Tower
A water storage tank, a standpipe, or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

Watercourse
A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Wholesale Sales
On-premises sales of goods primarily to customers engaged in the business of reselling the goods.

Wind Farm
An electricity-generating facility whose main purpose is to supply electricity to the electrical grid, consisting of one or more wind turbines and other accessory structures and buildings including substations, meteorological towers, electrical infrastructure, transmission lines, and other appurtenant structures and facilities, which has a rated capacity of greater than 100 kW.

Wind Energy Generator (Accessory)
A single system consisting of a single wind turbine, a tower, and associated control or conversion electronics designed to supplement other electricity sources as an accessory use to existing buildings or facilities, which has a rated capacity of not more than 100 kW.

Wind Power
Power that is generated in the form of electricity by converting the rotation of wind turbine blades into electrical current by means of an electrical generator.

Wind Turbine
A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and may include a nacelle, rotor, tower, and pad transformer.

Wind Turbine Height
The distance measured from grade to the highest point of the turbine rotor or tip of the turbine blade when it reaches its highest elevation.

Wireless Facility or Wireless Facilities *(Amended 11/20/2017)*
Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

(1) The structure or improvements on, under, within, or adjacent to which the equipment is collocated.

(2) Wireline backhaul facilities.

(3) Coaxial or fiber-optic cable that is between wireless structures or utility poles or Town utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless Infrastructure Provider *(Amended 11/20/2017)*
Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

Wireless Provider *(Amended 11/20/2017)*
A wireless infrastructure provider or a wireless services provider.

Wireless Services *(Amended 11/20/2017)*
Any services, using licensed or unlicensed wireless spectrum, including the use of WI-FI, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless Services Provider *(Amended 11/20/2017)*
A person who provides wireless services.

Wireless Support Structure *(Amended 11/20/2017)*
A new or existing structure, such as a Monopole, Lattice Tower, or Guyed Tower that is designed to support or capable of supporting Wireless Facilities. A Utility Pole or a City Utility Pole is not a wireless support structure.

Wooded Area

An area of contiguous wooded vegetation where trees are at a density of at least one (1) six-inch or greater caliper tree per three hundred twenty-five (325) square feet of land and where the branches and leaves form a contiguous canopy.

X

None

Y

Yard

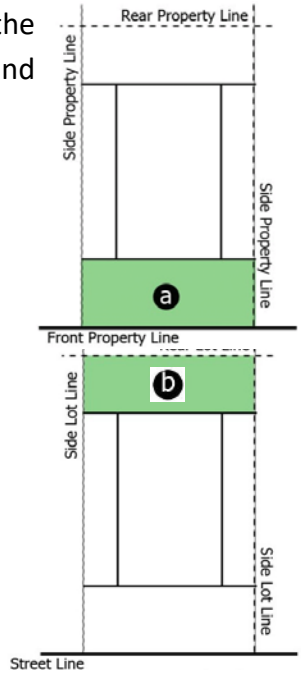
An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except by trees or shrubbery or as otherwise provided herein.

Yard, Front ⓐ

A yard across the full width of the lot, extending from the front line of the building to the front line of the lot, including the area of steps, eaves, and uncovered porches, but not including the areas of covered porches.

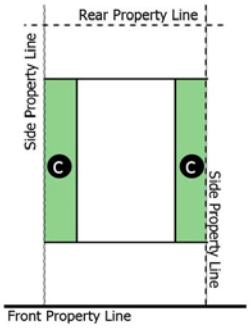
Yard, Rear ⓑ

A yard extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building.



Yard, Side Ⓒ

An open unoccupied space on the same lot with a building between the building and the side line of the lot extending through from the front building line to the rear yard or, where no rear yard is required, to the rear line of the lot.



Z

Zoning

A police power measure, enacted primarily by general purpose units of local government, in which the community is divided into districts or zones within which permitted and conditional uses are established as are regulations governing lot size, building bulk, placement, and other development standards. Requirements vary from district to district, but they must be uniform within districts. The Zoning Code consists of two parts: a text and a map.

Zoning Permit

A permit issued by the UDO Administrator that authorizes the recipient to make use of property in accordance with the requirements of this Ordinance.