APPENDIX A

~~Sec. 1-9. Supplementation of Code.¶~~

~~(a) By contract or by city personnel, supplements to this Code shall be prepared on an annual basis. A supplement to the Code shall include all substantive, permanent and general parts of ordinances passed by the city council during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.¶~~

~~(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.¶~~

~~(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified Code. For example, the codifier may:¶~~

~~(1) Organize the ordinance material into appropriate subdivisions;¶~~

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

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

~~(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and¶~~

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

Sec. 2-2. State of emergency; authority of mayor; imposition of restrictions.

(a) A state of emergency shall be deemed to exist whenever, during times of great public crisis, disaster, rioting, catastrophe or similar public emergency, for any reason, city public safety authorities are unable to maintain public order or afford adequate protection for lives or property.

(b) If an existing or threatened state of emergency occurs endangering the lives, safety, health and welfare of the people within the city, or threatening damage to or destruction of property, the mayor is authorized and empowered to issue a public proclamation declaring to all persons the existence of such a state of emergency and, in order to more effectively protect the lives and property of people within the city, to place in effect any or all of the restrictions authorized in this section.

(c) The mayor is authorized and empowered to limit by proclamation the application of all or any part of such restrictions to any area specifically designated or described within the corporate limits of the city and to specific hours of the day or night and to exempt from all or any part of such restrictions law enforcement officers, firefighters and other public employees, doctors, nurses, employees of hospitals and other medical facilities, on-duty military personnel, whether state or federal, on-duty employees of public utilities, public transportation companies, and newspaper, magazine, radio broadcasting and television broadcasting corporations operated for profit and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of the people within the city.

(d) The mayor shall proclaim the end of such state of emergency or all or any part of the restrictions imposed as soon as circumstances warrant or when directed to do so by the city council.

(e) During the existence of a proclaimed state of emergency, the mayor may impose by proclamation any or all of the following restrictions:

(1) Prohibit or regulate the possession off one's own premises of explosives, firearms, ammunition or dangerous weapons of any kind and prohibit the purchase, sale, transfer or other disposition thereof.

(2) Prohibit or regulate the buying or selling of beer, wine or intoxicating beverages of any kind and their possession or consumption off one's own premises.

(3) Prohibit or regulate any demonstration, parade, march, vigil or participation therein from taking place on any of the public ways or upon any public property.

(4) Prohibit or regulate the sale of gasoline, kerosene, naphtha or any other explosive or inflammable fluids or substances.

(5) Prohibit or regulate travel upon any public street, alley or roadway or upon any other public property, except by those in search of medical assistance, food or other commodity or service necessary to sustain the well-being of themselves or their families or some member thereof.

(6) Prohibit or regulate the participation in or carrying on of any business activity and prohibit or regulate the keeping open of places of business, places of entertainment and any other places of public assembly.

(f) Any proclamation may be extended, altered or repealed in any particular during the continued or threatened existence of a state of emergency by the issuance of a subsequent proclamation.

(g) During the existence of a proclaimed state of emergency, it shall be unlawful for any person to violate any provision of any restriction imposed by any proclamation authorized by this section. Such violations may be punished criminally as provided by N.C. Gen. Stat. § 14-4, or as otherwise provided under North Carolina law.

DIVISION 7. ~~ASHEVILLE TREE COMMISSION~~Urban Forestry Commission[1]

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DIVISION 8. CITY BUSINESS AND DEVELOPMENT COMMISSION¶

Sec. 2-165. Creation; composition; terms of office; organization.¶

(a) *Creation.* It is hereby declared that the public welfare and interest of the citizens of the city will be best served by establishing a commission to focus on issues related to business and development in our city and to promote the economic vitality of Asheville. To that end, there is hereby created and established a commission of the city to be known as the city business and development commission, referred to in this division as commission.¶

(b) *Composition.* The commission shall consist of two members appointed by the City Council of the City of Asheville and 13 other members, with one member being appointed by and representing each of the following groups:¶

Advantage West;¶

Asheville Area Chamber of Commerce;¶

Asheville Downtown Association;¶

Asheville Downtown Commission;¶

Asheville Merchants Association;¶

Biltmore Village Merchants Association;¶

Buncombe County;¶

Coalition of Asheville Neighborhoods;¶

Council for Independent Business Owners;¶

Eagle/Market Streets Development Corporation;¶

Handmade in America;¶

Minority Business Alliance;¶

RiverLink;¶

Tourism Development Authority;¶

West Asheville Business Association.¶

The members appointed to represent the groups listed above shall be appointed by those groups subject to the same policies and guidelines adopted by the Asheville City Council for their appointment.¶

(c) *Terms of office.* Members appointed by Advantage West, Asheville Area Chamber of Commerce, Asheville Downtown Association, Asheville Downtown Commission, and the Asheville Merchants Association shall be appointed initially for a one-year term beginning on October 1, 1996. Members appointed by Biltmore Village Merchants Association, Buncombe County, Coalition of Asheville Neighborhoods, Council for Independent Business owners, Tourism Development Authority, and one city council appointee shall be appointed initially for a two-year term beginning on October 1, 1996. Members appointed by Eagle/Market Streets Development Corporation, Handmade in America, RiverLink, West Asheville Business Association, Minority Business Alliance, and one city council appointee shall be appointed initially for a three-year term beginning on October 1, 1996. All subsequent appointments for each group shall be for three-year terms. All members shall be eligible for reappointments to one additional term. Those having initial one-year appointments will be eligible for three terms.¶

(d) *Selection of officers.* The city council shall select, from among the members of the city business and development commission, a chairman who shall serve at the pleasure of city council. The city business and development commission shall select annually from among its members a vice-chairman and secretary. ¶

(e) *Meetings.* The commission shall establish its meeting schedule. Special meetings may be called by the chairman or, in his absence, by the vice-chairman, and special meetings shall be called upon the request of a majority of the members of the commission, subject to requirements of the North Carolina Open Meetings Law. ¶

(f) *Voting.* A quorum shall be constituted by a simple majority of those appointed commission members. The chairman or presiding member of the commission shall vote on all matters of business considered by the commission. ¶

(g) *Transaction of business.* The commission shall act as a body in the transaction of all business, unless a committee or a member is duly authorized by the commission for a specific purpose. Such a committee is to be discharged upon the completion of the duties assigned to it, unless it is a permanent committee. ¶

(h) *Appointment of committees.* The commission is authorized to appoint committees from its membership or the community at large. Committee functions shall be fixed by the commission at the time of appointment. Committees may be standing or ad hoc in nature and shall perform such duties as may be assigned by the commission. ¶

(Ord. No. 2309, § 1, 8-13-96; Ord. No. 2334, § 1, 11-12-96; Ord. No. 2354, §§ 1, 2, 4-22-97)¶

Sec. 2-166. Purpose and powers.¶

(a) Subject to such limitations as may be imposed by state law or by ordinance of the city, the city business and development commission shall be embodied for the following purposes: ¶

(1) Recommend to the city council policies and strategies for the business and economic development of the city; ¶

(2) Coordinate the development of city business districts working with property owners, merchants and interested agencies and organizations; ¶

(3) Provide a mechanism for community participation for the purpose of making recommendations to the city council concerning plans and reports addressing city business and economic development; ¶

(4) Promote and recommend the improvement of the infrastructure and urban design necessary to achieve the city's development objectives; ¶

(5) Coordinate with other economic development entities in the area to accomplish city development objectives; ¶

(6) Encourage and recommend appropriate marketing programs for the promotion of Asheville and its business opportunities/districts; and ¶

(7) Assist in the development and promote the establishment of programs to assist in business retention and growth in the city. ¶

(b) To carry out the purposes stated in subsection (a) of this section, the commission shall have the power to: ¶

(1) Do all things, subject to limitations as may be imposed by state law or by ordinance of the city, necessary and convenient to carry out the purposes of the commission for the public welfare. ¶

(2) Make studies which further the implementation of its plans; ¶

(3) Make bylaws for the management and regulation of its affairs; and ¶

(4) Actively encourage and pursue the participation of the private sector and private capital in implementing approved projects. ¶

~~(Ord. No. 2309, § 1, 8-13-96)~~¶

~~Sec. 2-167. Staffing.~~¶

~~The city manager shall be responsible for providing staff support for the city business and development commission. The city manager shall assign appropriate staff who shall direct and carry out the annual work program of the commission.~~ ¶

~~(Ord. No. 2309, § 1, 8-13-96)~~¶

~~Secs. 2-168—2-170. Reserved.~~¶

DIVISION 3. GRIEVANCE PROCEDURE

Sec. 2-226. Policy.

(a) It is the policy of the city that all employees be treated fairly and equitably in all respects. Employees who feel they have not been so treated have a right to present an individual or group grievance to appropriate management officials for prompt consideration and equitable decision. Employees may orally or in writing, formally or informally, present complaints to their supervisors, starting with their immediate supervisor and proceeding through supervisory channels to the department head and city manager.

(b) When more than one grievance is filed regarding the same subject matter, each person in a supervisory position, from the immediate supervisor to the city manager, who is charged with the responsibility of making a determination in the grievance procedure shall determine whether to hear such grievances jointly or separately. The determination regarding whether to proceed with the grievances jointly or separately may be based upon that person's determination of the most efficient manner in which to handle the grievances. If the supervisor or city manager shall determine that the rights of an employee who has filed a grievance would be prejudiced by a joint hearing, that employee's grievance shall be heard separately.

(c) Before presenting their complaints to their supervisors, employees who file a group grievance shall select no more than six employee representatives from among those filing the grievance. Each person in a supervisory position, from the immediate supervisor to the city manager, who is charged with the responsibility of making a determination in the grievance procedure shall hear such a grievance through the group representatives; however, nothing in this section shall prohibit a supervisor from hearing the grievance with the entire group of grievants.

(d) It is the intent of this section that employees and their representatives be unimpeded and free from restraint, coercion, discrimination or reprisal in exercising this right of appeal. The filing of a grievance by any employee will not be construed as reflecting unfavorably on his good standing, performance, loyalty or desirability for continued service with the city. Any employee may discuss any matter with his supervisor, other levels of supervision and the personnel department without invoking the formal grievance procedure outlined in this division. ~~(See also section 1, Purpose of City of Asheville Personnel Policy, City of Asheville Personnel Policy.)~~

Sec. 2-227. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Grievance means a complaint or dispute of an employee relating to his employment. Examples of problems for which grievances may be filed include but are not limited to the following:

(1) Unfair interpretation or application of policies governing personnel practices;

(2) Unfair or inappropriate disciplinary actions;

(3) Unsafe physical facilities, surroundings, materials or equipment;

(4) Unfair or discriminatory disciplinary or supervisory practices;

(5) Unjust treatment by fellow workers;

(6) Unreasonable work requirements;

(7) Sexual or racial harassment;

(8) Safety or health matters;

(9) Acts of reprisal as the result of utilizing the grievance procedure; or

(10) Any other grievance related to conditions of employment.

~~(See also section 66, Grievance Defined, City of Asheville Personnel Policy.)~~ ¶

Sec. 2-228. Purposes.

The purposes of the grievance procedure include but are not limited to the following:

(1) Providing employees with a procedure by which their complaints can be considered promptly, fairly and without reprisal.

(2) Encouraging employees to express themselves about the conditions of work which affect them as employees.

(3) Promoting a better understanding of policies, practices and procedures which affect employees.

(4) Increasing the confidence that employees have that personnel decisions are in accordance with established, fair and uniform policies and procedures.

~~(See also section 67, Purposes of Grievance Procedure, City of Asheville Personnel Policy.)~~ ¶

Sec. 2-229. Procedures.

The steps enumerated in this section shall be followed in all employee grievances. All grievances must be in writing, either in letter or memo form or using a city grievance form, dated and signed. Upon receipt of a written grievance, the supervisor shall immediately forward a copy of it and any subsequent decisions regarding the matter to the grievant's department head and personnel director. However, if an employee feels that he has been subject to sexual or racial harassment by his supervisor, the employee may refer the matter directly to the employee's department head or the personnel director. Prior to the first formal step of the grievance procedure, an employee and his supervisor are encouraged to discuss the problem and seek to resolve it informally. This meeting should be scheduled by the employee within 15 calendar days of the incident or action giving rise to the problem.

(1) *Step 1.* If an informal meeting does not resolve the problem, the employee may file a written grievance within ten calendar days of the initial discussion; provided, however, if an informal discussion of the grievance has not taken place, an employee shall file his written grievance within 15 calendar days of the incident or action giving rise to the complaint. Ongoing conditions are not subject to this deadline. The supervisor shall respond, in writing, within ten calendar days of receipt of the written grievance. In some cases, the supervisor may feel that a second meeting would be constructive. If so, the supervisor may schedule a meeting with the employee within seven calendar days after receiving the written grievance, fairly investigate the matter and render a written decision on the grievance within seven calendar days of the meeting. If an employee has filed a grievance with a supervisor who lacks authority to resolve it, the supervisor shall immediately forward the grievance to the employee's department head or other appropriate supervisor to ensure that the grievance is acted on in a timely manner.

(2) *Step 2.* If the employee is not satisfied with the step 1 decision, the employee may file an appeal with his division head within seven calendar days following receipt of the step 1 decision. The division head shall respond, in writing, within ten calendar days of the receipt of the written grievance. In some cases, the division head may feel that a second meeting would be constructive. If so, the division head may schedule a meeting with the employee within seven calendar days after receiving the written grievance, fairly investigate the matter and render a written decision on the grievance within seven calendar days of the meeting. If an employee has filed a grievance with a division head who lacks authority to resolve it, the division head shall immediately forward the grievance to the employee's department head to ensure that the grievance is acted on in a timely manner.

(3) *Step 3.* If the employee is not satisfied with the step 2 decision, the employee may file an appeal with his department head within seven calendar days following receipt of the step 2 decision. The department head shall within ten calendar days hold a meeting with the employee for the purpose of discussing the grievance fully. The department head will render a written decision within ten calendar days of the meeting.

(4) *Step 4.* If the employee is not satisfied with the step 3 decision, the employee may file a written appeal with the city manager within seven calendar days following receipt of the step 3 decision. Within 15 calendar days of receipt of such request, the city manager shall hear matters pertinent to the grievance. In so doing, the manager may appoint a grievance committee to assist him in resolving the grievance. The role of such a committee shall be advisory and not binding on the city manager. Within 30 calendar days of such hearing, the decision of the city manager shall be reduced to writing and transmitted to the aggrieved employee by hand delivery or certified mail, return receipt requested. The decision shall also be distributed to the aggrieved employee's department head and the personnel department. In cases where the employee has been discharged, suspended, reduced in rank, transferred against his will or denied any promotion or raise in pay to which he would be entitled to, the decision of the city manager may be appealed to the civil service board as specified in step 5. In all other cases, the decision of the city manager is final.

(5) *Step 5.* If the employee is not satisfied with the step 4 decision, the employee may appeal his grievance to the civil service board. Such appeal shall be filed with the city clerk within ten days following receipt of the step 4 decision. The city clerk shall set the matter for hearing before the civil service board at a date not less than five and no more than 15 days from the clerk's receipt of such notice. If timely appealed, the civil service board shall only hear the grievance of a city employee who has been discharged, suspended, reduced in rank, transferred against his will or denied any promotion or raise in pay to which he would be entitled to determine whether or not the action complained of is justified. If the board determines that the act or omission complained of is not justified, the board shall order the city to rescind whatever action the board has found to be unjustified and may order the city to take such steps as are necessary for a just conclusion of the matter before the board.

(6) *Step 6.* If the employee is not satisfied with the step 5 decision, the employee may appeal his grievance to the county superior court for a trial de novo. Such appeal shall be filed with the clerk of superior court of the county within ten days of the receipt of the board's decision.

~~(See also section 68, Procedures, City of Asheville Personnel Policy.)~~ ¶

Sec. 2-230. Departmental predisciplinary conference.

(a) *Purpose.* A departmental predisciplinary conference shall be afforded any full-time permanent employee whose conduct or performance may result in his involuntary demotion, suspension without pay for more than ~~ten consecutive work shifts~~ fourteen (14) calendar days or dismissal from the city service. At such conference, the employee shall be given the opportunity to respond to the alleged inappropriate conduct or unsatisfactory performance, and the information received from the employee shall be used by the department head in determining whether or not there are reasonable grounds to support the action of suspension, demotion or dismissal.

(b) *Procedure.* The employee shall be given a minimum of 48 hours' notice of the date, time, location and subject matter of the predisciplinary conference. The notice shall be written and acknowledged as received by the employee or by his department or division head in cases where the employee refuses to acknowledge receipt. The predisciplinary conference shall be attended by and limited to the following:

(1) The employee;

(2) The supervisor of the employee;

(3) The department head; and

(4) A representative from the personnel department when requested by the employee or department head.

Such personnel representative shall be the director of personnel or his designee. In addition, either party may be represented by counsel. The conference shall be administrative in nature, and full opportunity will be afforded the employee to respond to the issues. At the conclusion of the conference, the employee will be advised as to when a decision will be made regarding the actions, if any, to be taken in the matter. The department head shall deliver a written decision to the employee within ten calendar days.

(c) *Failure to appear.* If the employee is duly notified and fails to appear for the predisciplinary conference, he shall forfeit the right to such a conference.

(d) *Procedure for appeal to city manager.* Any permanent full-time employee who is suspended without pay for more than ten consecutive work shifts, demoted or dismissed pursuant to this article shall have the right to appeal directly to the city manager under the grievance procedure. Such an appeal shall be requested in writing within 12 calendar days of the departmental action being appealed. All provisions of the grievance procedure regarding appeal to the city manager and the civil service board shall be applicable.

~~(See also section 69, Departmental Predisciplinary Conference, City of Asheville Personnel Policy.)~~ ¶

Sec. 3-4. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandon means to forsake or release an animal previously in the custody or possession of a person without providing for the adequate, continued care of the animal.

Adult means a person 18 years of age or older who has not been judicially declared incompetent.

Animal means any nonhuman vertebrate creature. Unless otherwise defined, the term animal includes, but is not limited to, dogs, cats, rabbits, fowl, chickens, horses, cows and goats. For the purposes of subsection 3-9(9) only, animal shall not include:

(1) Any small domesticated rodent such as a gerbil, guinea pig, hamster, rat or mouse;

(2) Any small bird including but not limited to a canary, parakeet, finch, parrot, cockatoo or myna; or

(3) Any amphibian, fish or non-venomous reptile.

Animal control administrator means the designee of the director of animal control responsible for supervising ~~the~~ animal control functions pursuant to this chapter. ~~department of the Asheville Police Department.~~

Animal shelter means any premises designated by the city for admitting and caring for all animals found running at large or otherwise impounded in accordance with the provisions of this chapter.

At large means an animal roaming unrestrained beyond the owner's exclusive control.

Attended tethering means the tethering of an animal, on the property of the owner of the animal, when the animal is in visual range of the owner and the owner is located outside with the animal.

Attractant means any substance which could reasonably be expected to attract a wild animal or animals or does attract a wild animal or animals, including but not limited to, food products, pet food, feed or grain.

Beehive means any receptacle, container, or part of receptacle or container which is made or prepared for the use of bees or which is inhabited by bees.

City manager means the city manager of the City of Asheville or his/her designee.

Dangerous animal is defined as:

(1) An animal that:

a. Without provocation has killed or inflicted severe injury on a person; or

b. Is determined by the animal control administrator to be a potentially dangerous animal.

(2) Any animal owned or harbored primarily or in part for the purpose of animal fighting or any animal trained for animal fighting.

Director or Animal Control means the director of the department responsible for animal control, or their designee.

Domesticated means any animal traditionally kept, cared for, sheltered, fed or harbored for use as a companion animal.

Exotic pet is any animal that is not classified as domesticated, livestock or a wild animal. This definition does not include feral animals.

Feral means an animal of a species normally domesticated that has reverted to a wild state.

Fowl means any bird traditionally associated with sport, farming or production including, but not limited to poultry and game birds.

Harboring an animal means feeding or sheltering an animal seven days or more unless the animal is being boarded for a fee.

Hatchery means any establishment that operates hatchery equipment for the production of baby chicks or poults.

Household means any room or group of rooms located within a building and forming a single habitable unit with facilities that are used or intended to be used for living, sleeping, cooking and eating.

Impounded means any animal, which taken into the custody of the animal control officer.

Humane care and treatment means maintaining an animal in an appropriate, sanitary environment. Humane care and treatment also considers the age, size, health problems, hardness and other characteristics of the individual animal in daily care to prevent avoidable harm and suffering.

Kennel means any person, partnership or corporation currently licensed by the state department of agriculture and engaged in the business of boarding, breeding, buying, letting for hire, training for a fee or selling dogs and/or cats.

Lawfully established, non-conforming use means a use of land and/or structure(s) for activities that were established legally, under the rules in place at that time in the applicable jurisdiction, prior to either an amendment of this chapter or the city acquiring jurisdiction over the property, and which would not be permitted by this chapter.

Livestock means animals commonly associated with farming including, but not limited to, horses, mules, ponies, swine, sheep, cattle and goats. Livestock shall not include chickens or fowl.

Lot means a portion, piece, division or parcel of land, with or without a household, which is identified by a tax map, recorded plat, deed, lease or the like. All contiguous land under common ownership and used for a single purpose shall constitute a single lot.

Owner means any person who or legal entity that has a possessory property right in an animal or harbors an animal or has it in his/her care, custody or control, or knowingly permits said animal to remain on any premises occupied by him or her. Presumption of ownership may be rebutted by proof that such person has no property right in the animal, is neither harboring nor caring for the animal and, in the case of a dog, is not the licensed owner. Excepting article II of this chapter, owner does not include veterinarians or commercial kennel operators temporarily maintaining on their premises for a period of less than 30 days animals owned by other persons.

Owner's real property means any real property owned or leased by the owner of the animal, but does not include any public right-of-way or a common area of a condominium, apartment complex or townhouse development.

Pet means any animal kept for pleasure versus utility.

Pet shop means any person, partnership or establishment that acquires for the purpose of resale or trade, animals bred or supplied by others. Pet shops dealing in dogs or cats must possess a current license from the state department of agriculture.

Potentially dangerous animal means an animal that the animal control administrator determines to have:

(1) Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization;

(2) Killed or inflicted severe injury upon a domestic animal when not on the owner's real property.

(3) Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

Premises means a definite portion of real estate including land with its appurtenances, a building or part of a building.

Quarantine order is an action taken by an animal control officer to secure any dog, cat or other animal specified by state law, which has bitten a person, for a mandatory ten-day observation period as required by N.C.G.S. §§ 130A-196—199. Quarantine orders may also be issued by the local health director for up to six months when a domestic animal suffers a rabies exposure.

Rabies exposure means any bite or other event in which a person or animal has been suspected of coming in contact with the saliva or nervous tissue of an animal possibly having rabies.

Refuse means all garbage, trash, substances and materials which are an attractant to a wild animal.

Secure enclosure means a structure with six sides including the top. The bottom must be concrete unless the sides of the structure are buried one foot deep in a hard-packed soil. The structure shall be a minimum of four feet high and surround at least 150 square feet in area. If the animal is over 15 inches at the shoulder, the structure shall be a minimum of six feet in height.

Secure fence means a padlocked fence that is a minimum of four feet high and secure enough to contain a particular dog at all times.

Severe injury means any physical injury that results in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization.

Sufficient food means the provision of food of sufficient quantity and quality to insure proper growth or maintenance of body weight appropriate to the age and species of the animal.

Sufficient shelter means a structure which consists of at least three sides, a floor and a roof and adequate in size and design to preserve the animal's body heat and protect the animal from the elements.

Sufficient water means access to a constant supply of water that is clean, fresh and visibly free of debris and organic material, provided at suitable intervals for the species, and not to exceed 24 hours at any interval.

Tether means to restrain an animal by tying the animal to any object or structure, including without limitation a house, tree, fence, post, garage, or shed, by any means, including without limitation, a chain, rope, cord, leash, or running line. Tethering shall not include using a leash to walk an animal.

T-runner means a device typically constructed from two airline cables and a pulley allowing a length of cable to move freely along a guide cable. When the T-runner is attached to the collar or harness of a dog, the dog may move uninhibited in the area below the guide cable.

Vaccination means the administration of rabies vaccine as required by N.C.G.S. § 130A-185.

Wild animal means any animal which can normally be found in the wild state, particularly those feral, dangerous or non-domesticated animals which generally do not live in or about the habitation of humans, including, but not limited to: bears, non-human primates, all felines (other than the domestic house cat), deer, raccoons, skunks, squirrels, turkeys, venomous snakes, elephants, camels, coyotes, wolves, and any hybrid or crossbreed of such animals which have similar characteristics of the animals specified herein.

Wildlife sanctuary means a charitable organization that is exempt from taxation under section 501(C)(3), Internal Revenue Code of 1986, that: a) Operates a place or refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced animals are provided care for the lifetime of the animal; b) Does not conduct any commercial activity with respect to wild animals, including but not limited to, (i) the sale, trade, auction, or lease of wild animals or their parts or (ii) the use of wild animals in any manner in a for-profit business or operation; c) Does not use wild animals for entertainment purposes or in a traveling exhibit; d) Does not breed any wild animals.

Sec. 3-8. Inspection, interference, or concealment.

(a) *Inspections.* Whenever it is necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the animal control officer has reasonable suspicion to believe that there exists in any household or upon any premises any violation of this chapter, the animal control officer is hereby empowered to enter and inspect such property at any reasonable time and perform any duty imposed upon him/her by this chapter as follows:

(1) If such property is unoccupied, the animal control officer shall first make a reasonable effort to locate the owner or other persons having control of the property; and

(2) If such property is occupied, the animal control officer shall first present proper credentials to the occupant and request entry, explaining the reasons therefore; and

(3) If such entry is refused or cannot be obtained because the owner or other person having control or charge of the property cannot be located after due diligence, the animal control officer may seek an administrative inspection warrant as provided in N.C.G.S. § 15-27.2.

(b) *Interference.* It shall be unlawful for any person to interfere with, hinder, resist, or obstruct the animal control officer while the animal control officer is carrying out any duty created under this chapter. Violation of this provision shall constitute a criminal offense and may be punished as set forth in N.C. Gen. Stat. § 14-4.

(c) *Concealment of animal.* It shall be unlawful for any person to conceal any animal for the purpose of evading any federal, state or local law. . Violation of this provision shall constitute a criminal offense and may be punished as set forth in N.C. Gen. Stat. § 14-4.

¶

Sec. 3-9. Public nuisance.

(a) The keeping of any animal in such manner or in such numbers as to constitute a public nuisance is hereby prohibited. For the purposes of this section, a public nuisance shall include, but not be limited to, the following:

(1) The keeping of any animal which by continued or repeated howling, yelping, barking or otherwise, causes loud noises which would disturb the quiet, comfort or repose of a reasonably prudent person on adjoining property;

(2) The keeping of any animal which habitually is at large;

(3) The keeping of a cage or pen constructed and used for the purpose of restraining animals within ten feet of the outer limits of the lot upon which the cage or pen is situated; provided, however, this setback requirement shall not be applicable where the placing of the cage or pen within the ten-foot area does not result in locating the cage or pen within 50 feet of the nearest household occupied by persons other than the owner or keeper of the cage or pen. This subsection shall not apply to the fencing of all or a major portion of a lot;

(4) Allowing or permitting an animal to damage the property of anyone other than its owner, including, but not limited to, turning over garbage containers, or damaging gardens, flowers, or vegetables, or defecating upon the property of another;

(5) Maintaining animals in an unsanitary environment which results in unsightly or offensive animal waste, litter, or odor which would disturb a reasonable person on adjoining property;

(6) The keeping, possession, harboring or feeding of animals; wild, feral or domesticated, which threaten the public health, safety and welfare of the community; provided, that nothing herein shall be construed to prohibit keeping or maintaining a bird feeder, or from feeding birds, unless said activity constitutes an attractant and its cessation is ordered by the animal control officer pursuant to this chapter.

(7) Maintaining an animal that habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, joggers, animals walked on a leash, bicycles or other vehicles;

(8) Failing to confine a female dog while in heat in a secure enclosure in such a manner that she will not be in contact with another dog, or attract other animals.

(9) Except as otherwise provided in section 3-10, the keeping of seven or more animals per household or lot, regardless of lot size and regardless of whether any of the provisions of this section are violated. This subsection shall not apply to offspring under the age of 16 weeks and to animals kept by a kennel or pet shop licensed in accordance with state and local law and to animals kept by a kennel, pet shop or other facility licensed or registered by the department of agriculture or the veterinary medical board.

(10) The tethering of any animal to public property or in a public right-of-way.

(11) After having received a warning or order from an animal control officer to remove an attractant, knowingly or willfully keeping or storing attractants in a manner contrary to the warning or order.

(b) Any violation of this section shall be deemed a non-criminal violation for which a civil penalty, as set forth in appendix B of this Code, may be assessed.

Sec. 3-10. Permits.

(a) Except for animals kept on as part of a lawfully established, non-conforming use, the keeping of animals in excess of that designated in subsection 3-9(a)(9) shall be allowed only upon the issuance of a written permit by the animal control administrator. The procedure for obtaining a permit shall be as follows:

(1) Pay the amount of the permit application fee as set ~~by~~ out in the city's fees and charges ~~committee~~manual.

(2) The application for each such permit shall contain the following information and documentation:

a. Size of the lot where the animal reside;

b. Size of the primary enclosure and housing facility where the animals reside;

c. The breeds of the animals;

d. The number of animals;

e. Purpose of the animals (i.e., pets, breeding, training);

f. Whether the keeping of the animals will be on a temporary (30 days or less) or permanent (in excess of 30 days) basis;

g. Whether the animals will be kept primarily indoors or outside;

h. The sex of the animals and whether the animals are spayed or neutered.

(3) Upon receipt of an application, an animal control officer shall make an inspection of the subject premises. The animal control officer may solicit comments from other interested parties.

(4) If the animal control administrator determines that the animals can be kept in such number and in such manner as not to constitute a threat to the health, safety or welfare of other persons residing near the property set forth in the permit application, the animal control administrator shall issue a permit allowing the keeping of such animals in accordance with the terms of the permit.

(5) All permits shall set forth an expiration date that shall not exceed 12 months from the date of issuance and shall require the keeping of the animals at the permitted location in such numbers and in such manner as the animal control administrator shall determine is necessary in keeping with the health, safety and welfare of the animals and the general public. In addition, the permit shall require the signed consent of the permittee for inspection of the premises at reasonable times by the animal control officer.

(6) No permit issued pursuant to this section shall be a defense to any action brought pursuant to subsections 3-9(1) through (10). The animal control administrator may refuse to issue a permit, and after having issued a permit may revoke a permit upon finding any of the following:

a. Any material misstatement or misrepresentation in the application for a permit.

b. Any willful violation by the applicant or permittee of this chapter or of the Animal Welfare Act, N.C.G.S. § 19A-20 et seq.

c. Any violation of the terms and conditions of the permit issued pursuant to the terms of this chapter.

d. Any violation of federal, state or local laws that relate to animals, zoning, nuisances or condition of the property.

(7) Upon the issuance, failure to issue, or revocation of any permit under this section, the applicant may appeal to the director of animal control for a determination concerning such issuance, failure to issue or revocation; provided, however, that any such appeal must be made in writing and delivered to the director of animal control within ten days following the issuance, failure to issue or revocation from which an appeal is taken.

(8) Upon revocation or expiration of a permit or the failure to issue a permit, the animals in violation of this section must be removed from the lot within seven days.

Sec. 3-12. Animal care.

(a) It shall be unlawful for any owner to fail to provide his/her animals with sufficient food, water, shelter and protection from the weather, veterinary care and with humane care and treatment.

(b) It shall be unlawful for any person to willfully or intentionally beat, injure, endanger, wound, torture, torment, disfigure, poison, overdrive, overload or otherwise abuse any animal.

(c) It shall be unlawful for any person to cause, instigate, permit, organize or attend any dogfight, cockfight or other combat involving animals. Violation of this provision shall constitute a criminal offense and may be punished as set forth in N.C. Gen. Stat. § 14-4.

(d) No person may transport any type of animal in a motor vehicle or in a wagon or trailer pulled by a motor vehicle, or in a truck or the back of a truck, in such a way as to cause pain, suffering, possible pain or death to the animal. Provided, however, there shall be no prohibition against the humane transportation of horses, cattle, sheep, poultry, or other livestock in trailers or other vehicles designed, constructed, and adequate for the size and number of animals being transported.

(e) It shall be unlawful for any person to place or confine an animal or allow an animal to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or well-being of such animal due to temperature, lack of food or drink, or such other conditions as may reasonably be expected to cause suffering, disability, or death. After making a reasonable effort to find the driver of a vehicle in which an animal is confined, the animal control officer, in the presence of a law enforcement officer, may use the least intrusive means to enter the vehicle if necessary to remove the animal, where reasonable cause exists to believe the animal may die if not immediately removed.

(f) It shall be unlawful to trap a wild animal in the city limits without a permit and/or license as required by the North Carolina Wildlife Resources Commission or successor agency. Live animals known to transmit the rabies virus, including but not limited to foxes, coyotes, skunks, bobcats, beavers, ground hogs and bats, shall not be trapped, handled, kept, transported or destroyed except by animal control officers or other authorized persons.

(g) Any person injuring or killing a domesticated animal by striking it with an automobile or other vehicle shall make reasonable and immediate efforts to notify the owner of said animal. If the owner cannot be contacted and the animal is still alive, reasonable measures must be taken to notify animal control.

(h) It shall be unlawful for any person to sponsor, promote, exhibit or train a wild, exotic or domesticated animal to participate in any unnatural behavior in which the animal is wrestled, fought, made to perform, harassed or displayed in such a way that the animal is abused or harmed.

(i) It shall be unlawful for an owner to leave a dog unattended and restrained by tether while outdoors.

(j) It shall be unlawful for any person to abandon any animal.

(k) It shall be unlawful for any person to auction, sell or trade any dog or cat in a public place without a valid permit from the N.C. Department of Agriculture. In addition it shall be unlawful to adopt any animal in a public place within the city unless the entity placing the animal is an active North Carolina non-profit corporation whose principal place of operation is located in Buncombe County, the animal is spayed or neutered prior to adoption and the animal has all of its necessary vaccinations as set forth by state law.

(l) It shall be unlawful for anyone to give away, sell or adopt any dog, cat, or rabbit under the age of eight weeks old without accompanying its mother.

(m) It shall be unlawful for any person to give away any live animal as a prize or as an inducement to enter any contest, game or other competition.

Sec. 3-13. Animal bite.

(a) It shall be unlawful for an animal to bite a human being who does not ordinarily reside on the premises, except a dog being used by a law enforcement officer to carry out the law enforcement officer's official duties or a dog that bites a person committing or attempting to commit a crime.

(b) The victim of a bite and the animal owner shall immediately report the incident to the Asheville Police Department. It shall be unlawful for any person to withhold accurate information revealing the location of the bite animal. A physician who attends the victim of a bite shall report the bite within 24 hours. Violation of this provision shall constitute a criminal offense and may be punished as set forth in N.C. Gen. Stat. § 14-4.

(c) It shall be unlawful for the owner of an animal under a quarantine order to fail to comply with the order in its entirety. The owner may also be subject to citation, preventive measures and/or dangerous dog classification as a result of the bite incident. The owner has the duty to report any changes in the animal's health or behavior or confinement during quarantine to an animal control officer immediately.

(d) If the owner is unwilling or unable to comply with an order of quarantine, the animal control officer may immediately seize the animal for impoundment and quarantine at the animal shelter at the owner's expense. If an owner fails to comply with the quarantine order, he/she waives the right to contest the seizure of the animal. Each day of non-compliance shall constitute a new violation.

(e) Wild mammals, including but not limited to, coyotes, raccoons, skunks, fox, bats and groundhogs involved in a rabies exposure shall be sacrificed and tested for rabies when they can reasonably be obtained. Other species may be tested at the discretion of the state veterinarian of the department of epidemiology. Dogs, cats or other animals specified by state law that die during quarantine shall be tested for rabies.

Sec. 3-20. Penalties.

(a) In addition to impoundment or seizure of the animal and unless otherwise designated, any violation of this chapter, except as set forth in subsection (d) or in a specific section, shall be deemed a non-criminal violation for which a civil penalty as set forth in appendix B of this Code may be assessed to the owner of such animal.

(b) The owner shall be issued a written notice of violation and penalty and the owner shall require payment to be made to the city within three business days of receipt of the notice. Notice of the civil penalty and violation shall be delivered in person to the owner or mailed by certified mail, return receipt requested, to the owner's last known address.

(c) Upon the owner's failure to pay the required amount within the designated three business day period, the city may institute a civil action in the nature of debt to recover such amount.

(d) A violation of subsections 3-8(b), 3-8(c), 3-12(c), 3-13(b), or 3-30(b) shall constitute a criminal offense and may be punished as set forth in N.C.G.S. § 14-4. Criminal penalties for violations of this Chapter may be assessed in addition to any criminal penalty issued pursuant to state or federal law.

Sec. 3-25

Dogs in Riverside Cemetery.

It shall be unlawful for any person to allow or cause his dog or any dog for which he is responsible to go upon the grounds of Riverside Cemetery at any time unless said dog is leashed at all times and said leash is held by the person responsible for the dog. Dogs subject to this provision shall be kept on the paved roads within the cemetery and not allowed to defecate or urinate on any grave site, headstone or monument. Any fecal matter deposited by a dog shall be removed from the cemetery by the person responsible for the dog. The main cemetery gate may be

posted any time a funeral or other service is in progress and no dogs shall be permitted in the cemetery during such times. This provision shall not apply to dogs assisting persons with sight disabilities, or other disabled persons who require the assistance of a dog.

Sec. 3-30. Seizure and disposition of animals.

(a) In addition to any other authority or procedure authorized by this chapter or by any other law to seize an animal, the animal control officer shall have the authority to summarily seize any animal from the premises when the animal control officer determines that the animal is receiving insufficient care or treatment as set forth in section 3-12 or that the animal in the surrounding circumstances is dangerous to the health, safety or welfare of the general public. Upon summarily seizing an animal, the animal control officer shall provide the owner with a written order of seizure. The animal control officer shall give notice of this section by posting a copy of it at the location where the animal was seized or by delivering it to a person residing on the property of the owner within 24-hours from the time the animal was seized.

(b) *Obligation of owner to comply with seizure order.* When the animal control officer serves the owner with a written order of seizure, it shall be unlawful for the owner to fail to comply with the order or to interfere with the animal control officer. A sworn officer shall accompany the animal control officer to seize the animal. Violation of this provision shall constitute a criminal offense and may be punished as set forth in N.C. Gen. Stat. § 14-4.

(c) *A challenge to the seizure order.* If the owner wishes to challenge the seizure order, then the owner must submit in writing the basis of the challenge within three business days of the seizure of the animal, not counting the day of seizure of the animal. The challenge must be filed with the director of animal control. The challenge to the seizure order shall be handled in the same manner as provided for in section 3-18 of this chapter.

(d) *Owner's redemption of animal.* The owner is entitled to redeem the animal, unless the animal control department retains the animal upon some other basis of legal authority, by paying all applicable fees, citation fees, boarding fees, any other costs that are attributable to the seizure of the animal, and complying with any outstanding order of the animal control officer.

(e) *Termination of owner's rights.* If an owner fails to comply with the requirements that constituted the basis for seizing the animal, or fails to reclaim the animal within the time allowed to appeal the seizure, then the animal shelter shall have the authority to humanely destroy the animal or place the animal for sale to the public, or to place the animal with a local humane society for future placement through the humane society, unless the animal's owner provides a security bond or cash in accordance with subsection (f).

(f) *Security bond.* Any person claiming an ownership interest in any animal confined pursuant to this chapter may prevent the disposition of the animal after the holding period set forth in subsections 3-29(c) or 3-30(e) by posting a security bond or cash with the animal shelter prior to the animal being adopted or euthanized in an amount sufficient to guarantee payment of all of the reasonable expenses expected to be incurred in caring and providing for the animal, including the estimated cost of medical care, for at least 30 days; However, such security bond shall not prevent the animal shelter from disposing of the animal at the end of the 30-day period covered by the posted bond/cash, unless the person claiming an ownership interest in the animal posts an additional security bond or cash with the animal shelter to secure payment of the animal's reasonable expenses for an additional 30 days, and does so prior to the expiration of the first 30-day period. The amount of the bond/cash shall be determined by the director of the animal shelter or his/her designee based on the current rate for board and on the condition of the animal after examination by a veterinary professional. Failure to post the security bond within the time allowed shall result in the animal being

immediately forfeited to the animal shelter. The owner must comply with any order issued by the animal control officer and pay all city fees and fines before the animal may be released from the animal shelter.

(g) *Security bond forfeited upon failure to pay costs.* If the fees, costs, and penalties owed for the animal are not paid in full by the end of each security period, the security bond already posted shall be forfeited to the animal shelter on said date and used to pay the remaining unpaid fees, costs, and penalties owing for the animal. The animal's owner shall remain responsible for all remaining unpaid fees, costs, and penalties. Any security bond/cash remaining after the payment of all fees, costs, and penalties shall be remitted to the person who posted the bond/cash.

Sec. 3-38. Issuance of permit.

(a) The owner must first pay the permit application fee and an annual permit fee as set in~~by~~ the city's fees and charges ~~committee~~manual. If, after making the inspection referred to in section 3-37, the animal control administrator finds that all ordinances of the city and laws of the state relating to the keeping of animals have been complied with and the keeping of the proposed animals will not interfere with the health, safety and general welfare of the surrounding neighborhood, a permit shall be issued.

(b) In issuing the permit, the animal control administrator may attach specific terms, including an expiration date. A permit issued under this section may be revoked by the animal control administrator at any time upon violation of the terms of the permit or any other provision of this chapter. Upon such revocation, the animal in violation must be removed from the premises by the owner within seven days from such expiration or revocation.

(c) Any permit issued pursuant to this section shall not be a defense to any action brought under subsections 3-9(1) through (10).

Sec. 3-51. Issuance of permit.

(a) The owner must pay an annual license fee as set in~~by~~ the city's fees and charges ~~committee~~ manual and register the fowl with the license-collecting agent of the city. The animal control administrator may inspect the property to determine whether the owner is in compliance with this chapter.

(b) A license issued under this section may be revoked by the animal control administrator at any time upon violation of the terms of the license or any other provision of this chapter. Upon such revocation, the fowl and/or coop in violation must be removed from the premises by the owner within seven days from such expiration or revocation.

(c) Any license issued pursuant to this section shall not be a defense to any action brought under subsections 3-9(1) through (10).

Sec. 4-4. Duties and responsibilities of chief of building inspections and codes enforcement officers.

(a) In addition to other duties assigned to him, the chief of building inspections and those codes enforcement officers assigned to assist him shall have the duty and responsibility of enforcing section 10-56 et seq.,

section 11-12 and section 10-26 et seq. The chief of building inspections and codes enforcement officers shall enforce such sections by the inspection of property and by the observance of those persons who are seen to violate any of the sections. They shall be empowered to issue citations when in their opinion any of the provisions of such sections have been violated. Citations so issued may be delivered in person to the violator by the chief of building inspections or codes enforcement officers or they may be mailed to the person so charged if he cannot be readily found. Any notice or citation so delivered or mailed shall direct the alleged violator to appear at the building inspections division, codes enforcement section, on or before a specific day and hour named in the notice, and the period so specified shall be not less than 72 hours after its delivery to the violator.

(b) When a person charged with a violation of any section enumerated in subsection (a) of this section, administered by the chief of buildings inspections, codes enforcement section, shall appear before the clerk on duty at the codes enforcement section of the building inspections division in response to a citation, such clerk is authorized, if the person appearing so desires, to allow him to sign on the docket which is kept in connection with violations and pay the civil penalty assessed. Upon payment, the clerk shall give him a receipt for the money paid, showing the type of violation, and shall deliver the money to the director of finance for the city.

(c) The chief of building inspections shall cause all citation forms to be serially numbered in triplicate, and records with respect to the citation forms are to be maintained so that all of them can be accounted for. The director of finance or his agent shall periodically investigate the records of the chief of building inspections, codes enforcement section, for the purpose of determining the disposition of the forms, and he shall report the result of such investigation to the city manager. For the purpose of making this investigation, the director of finance shall have access to the necessary records of the codes enforcement section of the building inspections division.

~~(d) If a violator of the provisions of the sections enumerated in subsection (a) of this section does not appear in response to the notice or citation at or before the date and hour named, a complaint will be filed and a warrant of arrest issued against that person.~~ ¶

Sec. 4-157. Violations and penalties.

Any person failing to comply with any order or notification issued and served in accordance with this article within the time specified therein shall be in violation of this article and shall be subject to the penalty of a fine of $50.00~~ or 30 days imprisonment or both such fine and imprisonment~~. Each day in violation of this article shall be a separate offense.

Sec. 4-190. Willful failure or refusal to comply with order.

It shall be unlawful for any person to willfully fail or refuse to comply with any final order or direction of the building inspector or city council made by virtue and in pursuance of this article. Any such violation shall subject the offender to the criminal penalty provisions of N.C. Gen. Stat. sec. 14-4. ~~Any person violating this article shall, upon conviction, be punished as provided by section 1-5 for the violation of municipal ordinances~~. Every day such person shall willfully fail or refuse to comply with any final order or direction of the building inspector or city council made by virtue and in pursuance of this article shall constitute a separate and distinct offense.

Sec. 4-220. Other unlawful acts.

(a) It shall be unlawful for any person, firm, or corporation to remove or permit the removal of, damage or deface any complaint, notice, order or certificate posted in accordance with the provisions of this Code, unless the code enforcement officer consents in writing to such action.

(b) It shall be unlawful for the owner of any dwelling or his agent or any person to lease, re-lease charge or accept rent for occupancy of any dwelling which does not have a housing certificate in accordance with the requirements of this Code.

(c) It shall be unlawful for the owner or owner's agent(s) of any dwelling subject to the provisions of this Code to fail to furnish to the buyer a copy of any required inspection findings or report prior to closing or other property transfer of such dwelling.

(d) . Any violation of this section shall constitute a class 3 misdemeanor, and the violator may be fined up to $500.00, in accordance with N.C. Gen. Stat. § 14-4.

Sec. 5-1. Burials prohibited except in specified cemeteries.

No human body shall be buried within the corporate limits of the city except in established cemeteries licensed by the state cemetery commission or in church cemeteries. Violation of this ordinance is a misdemeanor as set forth in N.C. Gen. Stat. § 14-4.

Sec. 5-2. Excavations.

No person shall excavate any earth in any cemetery or remove any earth therefrom, except by the consent or under the direction of the city council or of some other officer legally authorized in the premises. Violation of this ordinance is a misdemeanor as set forth in N.C. Gen. Stat. § 14-4.¶

Sec. 5-3. Depth of graves.

All graves in any cemetery in the city over 4½ feet in length shall not be less than five feet deep. Violation of this ordinance is a misdemeanor as set forth in N.C. Gen. Stat. § 14-4.¶

Sec. 5-4. Interment of additional body in grave.

No person shall open any grave in any cemetery within the city and inter therein any additional body. Violation of this ordinance is a misdemeanor as set forth in N.C. Gen. Stat. § 14-4.

Sec. 5-5. Permit to exhume body.

No person shall exhume any human body in any cemetery in the city without a written permit from the duly authorized representative of the state or county. Violation of this ordinance is a misdemeanor as set forth in N.C. Gen. Stat. § 14-4.

Sec. 5-6. Interfering with walks, decorations or general arrangement.

No person shall perform any work in a cemetery in such manner as to interfere with the walks, decorations or general arrangement of the cemetery, except with the permission of the duly authorized representative of the state or county. Violation of this ordinance is a misdemeanor as set forth in N.C. Gen. Stat. § 14-4.

~~Sec. 5-7. Use as playground.~~¶

~~No person shall use any part of any cemetery within the city as a playground.~~ ¶

~~(Code 1965, § 9-10)~~¶

Sec. 5-8. Vehicles.

No person shall drive any vehicle in any cemetery, except on driveways or roadways provided for that purpose. Violation of this ordinance is a misdemeanor as set forth in N.C. Gen. Stat. § 14-4.

Sec. 5-9. Sale of merchandise or food.

It shall be unlawful for a person to sell or offer for sale any article of merchandise or any fruit, drink or beverage or any other thing of value within the limits of any cemetery in the city. Violation of this ordinance is a misdemeanor as set forth in N.C. Gen. Stat. § 14-4.

Sec. 5-10. Disturbing graves or injuring or removing cemetery property.

(a) It shall be unlawful for any person to:

(1) Destroy, mutilate, deface, injure or remove any of the following:

a. Tomb, monument, gravestone or other structure or thing placed in any cemetery in the city;

b. Fence, railing or other structure or thing placed in any cemetery; or

c. Fence, railing or other work for the protection or ornamentation of any tomb, monument, gravestone or other structure or for the ornamentation or protection of any cemetery;

(2) Willfully destroy, cut, break, remove or injure any tree, flower, shrub or plant planted or growing in any cemetery; or

(3) Commit any other depredation within the limits of any cemetery.

(b) Violation of this ordinance is a misdemeanor as set forth in N.C. Gen. Stat. § 14-4.

~~Sec. 5-11. Dogs in Riverside Cemetery.~~¶

~~It shall be unlawful for any person to allow or cause his dog or any dog for which he is responsible to go upon the grounds of Riverside Cemetery at any time unless said dog is leashed at all times and said leash is held by the person responsible for the dog. Dogs subject to this provision shall be kept on the paved roads within the cemetery and not allowed to defecate or urinate on any grave site, headstone or monument. Any fecal matter deposited by a dog shall be removed from the cemetery by the person responsible for the dog. The main cemetery gate may be posted any time a funeral or other service is in progress and no dogs shall be permitted in the cemetery during such times. This provision shall not apply to dogs assisting persons with sight disabilities, or other disabled persons who require the assistance of a dog.~~ ¶

Sec. 6-2. Amendments.

The North Carolina Fire Prevention Code is hereby adopted and shall be amended and changed in the following respects:

(a) Chapter 1 is amended by the addition of the following sections:

103.2 Appointment. The Fire Marshal's Office is established as a division of the City of Asheville Fire Department and this division shall operate as the department of fire prevention defined in section 103.1. The Fire Chief shall appoint fire code enforcement officials, certified by the State of North Carolina~~., and these fire code officials shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the City of Asheville.~~

103.3 Employees. In accordance with the prescribed personnel policies and procedures of the City of Asheville, the Fire Chief shall have the authority to appoint a Fire Marshal, Deputy Fire Marshals, Assistants, and other related technical officers, inspectors, plan reviewers, and other employees necessary to enforce this code.

103.4 Liability. The fire code official, officer or employee charged with the enforcement of this code, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties.

103.4.1 Legal defense. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the City of Asheville until the final termination of the proceedings. The fire code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code; and any officer of the department of fire prevention, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

103.5 Interference. It shall be unlawful for any person to interfere with a fire code official carrying out any duties or functions prescribed by this code. For the purpose of this section interfere shall include, but not be limited to, threats or actions concerning employment status or disciplinary action affecting any fire official in connection with actions properly taken under the authority of the Fire Prevention Code, refusal to admit a fire official possessing a warrant pursuant to N.C. Gen. Stat. §~~Section~~ 15-27.2 to the premise named in that warrant, unwanted physical contact with or restraint of a fire code official, or harassment of a fire code official in connection with official actions whether on or off duty. Any such conduct, per this ordinance, may be punished as a class 3 misdemeanor as set forth in N.C. Gen. Stat. § 14-4.

103.6 Impersonation. It shall be unlawful for any unauthorized person to use a badge, uniform, or other credentials, so as to impersonate a fire code official for the purpose of gaining entry to any premises, or for the purpose of selling or offering for sale any fire protection device, appliance, material, or service. Any such conduct, per this ordinance, may be punished as a class 3 misdemeanor as set forth in N.C. Gen. Stat. § 14-4.

104.10 Fire investigations. The fire code official or other responsible authority designated by the fire chief shall have the authority to investigate the cause, origin and circumstances of any fire, explosion or other hazardous condition. Information that could be related to trade secrets or processes shall not be made part of the public record except as directed by a court of law.

104.10.1 Assistance from other agencies. Police and other enforcement agencies shall have authority to render necessary assistance in the investigation of fires when requested to do so.

104.10.2 Fire investigation records. The fire department shall keep a record of fire investigations occurring within its jurisdiction and of facts concerning the same, including statistics as to the extent of such fires and the damage caused thereby, together with other information as required by the fire chief.

104.12.1 Fire station parking. The fire chief shall have the authority to regulate parking on streets and other areas adjacent to any fire station or other fire department facility.

104.13.1 Public Street and Sidewalk Closures. The temporary or permanent closure or obstruction of any public street or sidewalk must be approved by the fire code official prior to such closure or obstruction placement, when such closure or obstruction would affect life safety or fire apparatus response.

105.1.4 Operational Permits required. Permit fees shall be as specified by the City of Asheville. Failure to pay the required fees and charges shall be a violation of this code. In addition to those permits specified as mandatory by this code, the following optional permit sections are adopted as mandatory permits by the City of Asheville:

105.6.17 Floor finishing

105.6.20 Hazardous Materials

105.6.22 High Piled Storage

105.6.24 Industrial ovens

105.6.30 Open Burning

105.6.31 Use of Torch or Open Flame Device

105.6.32 Open flames and candles

105.6.34 Places of assembly

105.6.39 Repair garages and motor fuel-dispensing facilities

105.6.42 Storage of scrap tires and tire byproducts

105.6.44 Tire-rebuilding plants

105.6.45 Waste handling

105.6.47 Road and Public Way Obstructions. An operational permit is required for the temporary or permanent obstruction of any fire apparatus access road or public way when such obstruction, in the opinion of the fire code official, would affect life safety, exit discharge, or fire apparatus use.

107.6 Overcrowding. It shall be unlawful to permit overcrowding or admittance of any person beyond the approved capacity of a building, premise, or portion thereof. The fire code official, upon finding any overcrowding conditions, or obstructions in aisles, passageways, or other means of egress, or upon finding any condition which constitutes a serious menace to like, shall be authorized to cause the performance, presentation, spectacle, or entertainment to be stopped until such condition or obstruction is corrected. The fire code official is authorized to order the evacuation of a building, premise, or portion thereof to abate the overcrowded condition.

106.1 Inspection Schedule Adopted. The inspection schedule specified in section 106 is adopted. This inspection schedule represents a minimum inspection schedule. If fires or other circumstances indicate that more frequent inspections of individual occupancies or classes of occupancies will assist in reducing life and property losses from fire, then more frequent inspection will be undertaken.

109.1 Unlawful acts. It shall be unlawful for a person, firm or corporation to erect, construct, alter, repair, remove, demolish, or utilize a building, occupancy, premises, or system regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

109.2 Notice of violation. When the fire code official finds a building, premises, vehicle, system, facility, or outdoor area that is in violation of this code, the fire code official is authorized to prepare a written notice of violation describing the conditions deemed unsafe and, when compliance is not immediate, specifying a time for compliance.

109.2.1 Service. A notice of violation issued pursuant to this code shall be served upon the owner, operator, occupant, or other person responsible for the condition or violation, either by personal service, mail, or by delivering the same to, and leaving it with, some person of responsibility upon the premises. For unattended or abandoned locations, a copy of such notice of violation shall be posted on the premises in a conspicuous place at or near the entrance to such premises or the notice of violation shall be mailed to the last known address of the owner, occupant, or both.

109.2.2 Compliance with orders and notices. A notice of violation issued or served as provided by this code shall be complied with by the owner, operator, occupant, or other person responsible for the condition or violation to which the notice of violation pertains.

109.2.3 Prosecution of violations. If the notice of violation is not complied with promptly, the fire code official is authorized to request the City Attorney of the City of Asheville to institute the appropriate legal proceedings at law or in equity to restrain, correct or abate such violation or to require removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

109.2.4 Unauthorized tampering. Signs, tags or seals posted or affixed by the code official shall not be mutilated, destroyed, tampered with, or removed without authorization from the fire code official.

109.3 Violation penalties. Any person, firm, corporation or their assigns, agent or executor who violates a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be deemed in violation of this code. Violators of this code may be assessed a civil monetary penalty based upon the class of violation and the fee schedule of civil penalties as adopted by the City of Asheville.

109.3.1 Classes of violations. Violations of this code shall be assigned a violation classification as defined in this section. Determination of the class of violation shall be at the sole discretion of fire code officials of the Asheville Fire Department who are charged with enforcement of this code, unless otherwise specified in this code. As used in this section, an emergency shall be defined as an unexpected situation or event, of a serious nature, requiring immediate action or response by the Asheville Fire Department.

109.3.1.1 Class D. A violation of the provisions of sections 503.4 and 507.5.4 by a motor vehicle shall be deemed a Class D violation.

109.3.1.2 Class C. A violation of the provisions of this code which causes an increase of the hazard or menace of fire, explosion, or other hazardous condition or may delay, hinder, or interfere with the operations of the fire department shall be deemed a Class C violation.

109.3.1.3 Class B. A violation of the provisions of this code which may delay, hinder, or prevent the egress of the occupants in the event of a fire and/or other emergency or acts which may prevent the operation of fire and/or life safety devices and/or systems shall be deemed a Class B violation.

109.3.1.4 Class A. A violation of the provisions of this code that delayed, hindered, or prevented the egress of the occupants during an emergency or caused a fire or increased the severity of a fire or acts that prevented the operation of a fire and/or life safety system or device during an emergency shall be deemed a Class A violation.

109.3.1.5 Violations of Section 107.6 concerning overcrowding, as well as any future iterations thereof, shall be punished as follows: First Offense - Written warning or as a Class D violation; Second Offense - Class C violation; Third Offense - Class A violation. Additionally, upon the discovery of any Violation of the North Carolina Building Code: Fire Prevention Code Section 107.6 concerning Overcrowding, the fire marshal, or the fire marshal's designee, is authorized to order the evacuation of a building, premise, or portion thereof to abate the overcrowded condition. The enforcement procedures set forth in this section are in addition to,

and cumulative of, the fire marshal's existing authority to order the immediate evacuation of a building upon discovery of conditions that pose imminent safety risks.

109.3.2 Abatement of violation. In addition to the imposition of the civil penalties herein described, the fire code official is authorized to institute appropriate action to prevent unlawful construction or to restrain, correct or abate a violation; or to prevent illegal occupancy of a structure or premises; or to stop an illegal act, conduct of business or occupancy of a structure on or about any premises in accordance with N.C. General Statutes.

109.3.3 Continuing violations. Each calendar day, or other time period as specified in a written notice, that a violation continues after due notice has been served, shall be deemed a separate offense.

109.3.4 Appeals of civil penalties. The Fire Marshal shall establish written rules and regulations for a procedure, not inconsistent with the provisions of this code, city policies, and applicable state law, for administering an appeals process regarding civil penalties. This City of Asheville appeal process shall be approved by the Fire Chief and only be applicable to the provisions of sections 109.3 to 109.3.1.4. All other appeals of the provisions of this code shall be referred to the North Carolina Office of State Fire Marshal as provided for in The North Carolina Administrative Enforcement Code and Policies.

(b) Chapter 2, section 202 is amended by the addition of the following definition:

TRAFFIC CALMING DEVICES. Traffic calming devices are design elements of fire apparatus access roads such as street alignment, installation of barriers, and other physical measures intended to reduce traffic and cut-through volumes, and slow vehicle speeds.

(c) Chapter 4 is amended by the addition of the following sections:

401.9 Nuisance fire alarms. It shall be unlawful for fire alarm systems to transmit a nuisance alarm which causes a fire department response. A nuisance alarm shall include any unplanned fire department response that is caused by fire alarm testing or an evacuation drills using the fire alarm system.

(d) Chapter 4; section 404.2 amended by the addition of items:

16. Motor fuel-dispensing facilities

17. Unattended self-service stations shall have an approved fire safety plan.

(e) Chapter 4 is amended by the addition of the following sections:

408.12 Motor Fuel Dispensing Facilities. Motor fuel dispensing facilities shall comply with sections 408.12.1 through 408.12.2.

408.12.1 Employee training. Employees shall be instructed by owners or operators of service stations in the following

1. Operation of emergency fuel shutoffs required by section 2203.2.

2. Dispensing procedures in section 2204.

3. Spill control procedures in section 2205.3.

408.12.2 Spill control equipment. Each motor fuel dispensing facilities shall maintain the following emergency equipment and materials:

1. Absorbent materials, in a quantity and type as approved by the fire code official.

2. An approved waste container for the containment of the absorbent materials used to mitigate a spill.

408.13 Unattended Self Service Motor Fuel Dispensing Facilities. Approved unattended self service motor fuel dispensing facilities shall be exempt from the provisions of 408.12.1.

(f) Chapter 5 is amended by adding sections 503.4.1, 503.4.2, 503.4.2.1, and 507.5.4.1 and amending section 506.1 as follows:

503.4.1. Traffic calming devices. Traffic calming devices shall be prohibited, unless approved by the fire code official and the City Traffic Engineer.

503.4.2 Responsibility for obstructions. The owner of a premise shall be responsible to keep fire apparatus access roads on their premises clear of any obstruction which reduces the required width to less than that required by the fire code official.

503.4.2.1 Responsibility for Vehicles. The registered owner shall be responsible for their vehicle which obstructs a fire apparatus access road. The use of a fire lane for loading and unloading shall comply with NC General Statute 20 -162(b).

507.5.4.1 Responsibility for Vehicles. The registered owner shall be responsible for their vehicle that violates section 507.5.4 or 507.5.5.

506.1 Where required. The fire code official is authorized to require a key box to be installed in an approved location. The key box shall be of an approved type, listed in accordance with UL 1037, and shall contain keys to gain necessary access as required by the fire code official.

(g) Chapter 6 is amended by the addition of the following section:

607.4.1 Elevator key type. When a building has multiple elevators, the keys required by section 607.4 shall be a single key type, as approved by the fire code official.

(h) Chapter 38 is amended by the addition of the following section:

3801.5 Maximum capacity within established limits. Within the limits established by the primary and secondary fire districts, the aggregate capacity of any one installation shall not exceed a water capacity of 2,000 gallons.

(i) That the limits referred to in certain sections of the N.C. Fire Prevention Code are hereby established as follows:

3404.2.9.6.1 (Limits in which the storage of Class I and Class II liquids in above-ground tanks outside of buildings is prohibited): City of Asheville Primary and Secondary Fire Districts.

3406.2.4.4 (Limits in which the storage of Class I and Class II liquids in above-ground tanks is prohibited): City of Asheville Primary and Secondary Fire Districts.

3506.2.4.4 (Limits in which the storage of flammable cryogenic fluids in stationary containers is prohibited): City of Asheville Primary and Secondary Fire Districts.

(j) Appendix D of the 2012 International Fire Code is adopted and amended by deleting figure D103.1 and Table D103.4 and the addition of replacement sections as follows:

D103.1 Access road widths. Access road widths shall comply with section 503 and the City of Asheville Standard Specifications and Details Manual.

D103.2 Grade. Fire apparatus access roads shall not exceed 15 percent in grade.

EXCEPTION: Where an approved automatic sprinkler system is installed, grades steeper than 15 percent but less than 18 percent are permitted, as approved by the fire chief and the city traffic engineer.

D103.4 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet shall be provided with width and turnaround provisions in accordance with the City of Asheville Standard Specifications and Details Manual.

D105.1 Where required. Approved aerial fire apparatus access roads shall be provided for any building with an occupied floor located more than 55 feet (16 764 mm) above the lowest level of fire department vehicle access.

(k) Appendix F of the 2012 International Fire Code is adopted.

(l) Appendix J of the 2012 International Fire Code is adopted and amended as followed.

J101.8 (2) The fire department shall conduct inspections to verify compliance with this section of the code in accordance with section 106 and shall notify the owner, or the owner's agent, of any required updates to the sign in accordance with fire department designations and the owner, or the owner's agent, shall comply within 30 days.

(m) Appendix K is added as follows:

Appendix K Fire Limits

Fire District No. 1(Primary Fire District) Beginning at the intersection of the centerlines of Spruce Street and Walnut Street and running thence southerly along the centerline of Spruce Street to its intersection with the centerline of Eagle Street; thence southerly, crossing Eagle Street to the centerline of Velvet Street; thence with the centerline of Velvet Street southerly and westerly, crossing South Market Street to its intersection with the centerline of South Market Street; thence northwesterly, crossing South Market Street to the centerline of Wilson Alley; thence along the centerline of Wilson Alley to its intersection with the centerline of Sycamore Street; thence with the centerline of Sycamore Street to its intersection with the centerline of Biltmore Avenue; thence northerly along the centerline of Biltmore Avenue to its intersection with the centerline of Aston Street; thence westerly along the centerline of Aston Street to its intersection with the centerline of Asheland Avenue; thence northerly along the centerline of Asheland Avenue to its intersection with the centerline of Patton Avenue; thence westerly along the centerline of Patton Avenue to its intersection with the centerline of Otis Street; thence northerly along the centerline of Otis Street to its intersection with the centerline of Battery Park Avenue; thence easterly along the centerline of Battery Park Avenue to it intersection with the centerline of Page Avenue; thence northerly and northeasterly along the centerline of Page Avenue to its intersection with the centerline of Haywood Street; thence northerly along the centerline of Haywood Street to its intersection with the centerline of Hiawassee Street; thence easterly and southeasterly along the centerline of Hiawassee Street to its intersection with the centerline of North Lexington Avenue; thence northerly along the centerline of North Lexington Avenue, which becomes the centerline of Broadway, to its intersection with the centerline of Bordeaux Place; thence easterly with the centerline of Bordeaux Place to a point in the centerline of Bordeaux Place which is 150 feet east of the centerline of Broadway; thence southerly along a line parallel to and 150 feet east of the centerline of Broadway to the intersection of that line with the southern margin of the right-of-way of the connector road from Merrimon Avenue which crosses Broadway to the westbound entrance ramp of Interstate 240; thence easterly with the southern margin of the right-of-way of said connector to its intersection with the centerline of Merrimon Avenue; thence northerly with the centerline of Merrimon Avenue which becomes the centerline of Broadway, to its intersection of the centerline of Woodfin Street; thence easterly along the centerline of Woodfin Street to a point in the centerline of Woodfin Street which is an extension of the western boundary of the property described in Deed Book 1156 at Page 639 in the Office of the Register of Deeds for Buncombe County; thence southerly to the northwestern corner of said property; thence southerly with the western boundary of said property to it intersection with the northern right-of-way margin of Walnut Street; thence southerly to the centerline of Walnut Street; thence easterly along the centerline of Walnut Street to its intersection with the centerline of Spruce Street, to the point and place of beginning.

Fire District No. 2 (Secondary Fire District) Beginning at the intersection of the centerline of Church Street and Banks Avenue and running thence southerly along the centerline of Church Street to its intersection with the centerline of Buxton Avenue; thence westerly along the centerline of Buxton Avenue to it intersection with the centerline of Millard Street; thence southwesterly along the centerline of Millard Street to its intersection with the centerline of Coxe Avenue; thence northerly along the centerline of Coxe Avenue to its intersection with the centerline of Banks Avenue; thence easterly along the centerline of Banks Avenue to its intersection with the centerline of Church Street, the point and place of beginning.

Sec. 7-18-2. Penalties for violations.

(a) *Liabilities for violations.* Pursuant to N.C. Gen. Stat. sec. 160A-175, any person who erects, constructs, reconstructs, alters, repairs, converts, or maintains any building, structure, sign or sign structure or develops, grades or otherwise alters property in violation of this chapter, any person who uses any building, structure, sign or sign structure or land in violation of this chapter or owns the property where a person erects, constructs, reconstructs, alters, repairs, converts, or maintains any building, structure, sign or sign structure or develops, grades or otherwise alters property in violation of this chapter shall be subject to civil and criminal penalties in accordance with this article.

(b) *Civil penalties.*

(1) *General.* Violations of this chapter, except as otherwise stated herein, including violations of sections 7-5-13, 7-12-1, 7-12-2 and article XV, shall subject the offender to a penalty in the amount of $100.00 per day for each day the violation continues, to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been cited for the violation.

a. There shall be a civil penalty for damaging or destroying trees and vegetation for use in landscaping and buffering as set forth in section 7-11-2 of the chapter. This section is also applicable to trees and vegetation destroyed from a historic landmark or property in a Historic District without a certificate of appropriateness as set forth in section 7-5-11. The additional one time fine shall be set forth in Appendix B - Schedule of Civil Penalties subsection I. The replacement schedule will not be applicable for violations of section 7-5-11. This civil penalty is in addition to the civil penalty issued in subsection 7-18-2(b)(1).

b. There shall be an additional civil penalty for altering, damaging or destroying the exterior of a historic landmark or structure in a Historical District without a valid certificate of appropriateness issued pursuant to section 7-5-11 as set forth in Appendix B - Schedule of Civil Penalties subsection J. This civil penalty is in addition to the civil penalty issued in 7-18-2(b)(1).

c. There shall be a penalty of $500.00 per day for a violation of any of the provisions of this chapter relating to the use of a residential structure for a Lodging use, including:

1) The renting or leasing of a dwelling unit for less than one month in districts which do not allow lodging facilities; and

2) The use of property as a homestay.

(2) *Stormwater control, soil erosion and sedimentation control, illicit discharge and connection.*

a. *Violation of soil erosion and sedimentation regulations:* Any person who violates any of the provisions of the soil erosion and sedimentation control requirements of section 7-12-2 and/or who initiates a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a

civil penalty. The maximum civil penalty for a violation is $5,000.00. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

b. *Violation of stormwater control, illicit discharge and connection regulations:* Any person who violates the stormwater control, illicit discharge and connection regulations of section 7-12-2, shall be subject to a civil penalty. The maximum civil penalty for a violation is $25,000.00; however; for a continuing violation the maximum per day per violation penalty shall be $10,000.00, unless a civil penalty has been imposed against the violator within the five years preceding the current violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

c. *Assessment of penalty:* The amount of the civil penalty shall initially be determined and assessed by the stormwater administrator in strict accordance with the table of penalties as set forth herein.

Table of Penalties								
Erosion and Sediment Control								
	Grading without permit	Site/Plan not in accordance with approved plan	Failure to maintain erosion control measures	Offsite Sedimentation	Buffer zone violation	Graded slopes or fills not in compliance	Lack of ground cover	Improper fill materia
Immediate Fine	$100 per 2,000 SF disturbed max of $5,000 NOV Issued	NOV Issued	NOV Issued	Slight-$0—$500 Moderate $501—$2,000 Severe $2,001—$5,000 NOV Issued	$100 per 5 SF disturbed, max of $5,000, NOV Issued	NOV Issued	NOV Issued	NOV Issued
On Going Violation (Failure to Comply with NOV)	Per day penalty equal to or greater than immediate penalty	$500 per measure not installed correctly or $1,000 per measure not installed, max of $5,000 (every 100 L.F. of silt	$500 per measure not maintained correctly, max of $5,000 (every 100 L.F. of silt fence or diversion shall be counted as	Per day penalty equal to or greater than immediate penalty	Per day penalty equal to or greater than immediate penalty $100 per 100 SF not compliant max of $5,000	$100 per 100 SF not compliant max of $5,000	$0—$5,000 (To be based on amount of improper fill and possible hazard for failure or leeching of pollutants)	$200 pe reportin g period for each report not filed

		fence or diversion shall be counted as 1 measure)	1 measure)					

d. *Guidelines for penalty assessment:* In determining the amount of the penalty to assess, the stormwater administrator shall be guided by the following:

1. *Soil erosion and sedimentation regulation:* The stormwater administrator shall be guided by the degree and harm caused by the violation; the cost of rectifying damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with referenced subsection.

2. *Stormwater control, illicit discharge and connection regulations:* The stormwater administrator shall be guided by the degree and extent of harm to the natural resources of the city, to the public health, or to private property resulting from the violation; the duration and gravity of the violation; the effect on ground or surface water quantity or quality or on air quality; the cost of rectifying the damage; the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with referenced subsection.

e. *Notice of civil penalty assessment:* The stormwater administrator shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment in writing, within 30 days after receipt of the notice of assessment.

f. *Appeal to erosion control plan review committee:* Any aggrieved party may file an appeal of the penalty assessment made by the stormwater administrator to the erosion control plan review committee (committee) within 30 days of receipt of the penalty assessment. The appeal must be submitted in writing to the stormwater administrator and shall specify the grounds for appeal. The stormwater administrator shall forthwith transmit to the Committee all documents constituting the record on which the decision appeal was taken. A hearing for the appeal shall be held within 30 working days after the receipt of the written appeal. The hearing shall be quasi-judicial with the right of the aggrieved party to have counsel present, to confront and examine witnesses and to review all documents. In the absence of an appeal to the committee, the penalty assessment of the stormwater administrator shall be final. The committee may reverse or affirm, wholly or partly, or may modify the penalty appealed from along with the associated findings made therein to support the penalty. To this end, the committee shall have all the powers of the stormwater administrator from whom the appeal is taken.

g. *Appeal to superior court:* Every decision of the committee shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the committee is filed in the office of the stormwater administrator or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the committee at the time of its hearing of the case, whichever is later. The decision of the committee may be delivered to the aggrieved party either by personal service, by registered mail or certified

mail returned receipt requested or by any means authorized under G.S. 1A-1, Rule 4. The appeal shall be limited to the record before the committee.

h. *Failure to appeal and/or pay:* Any civil penalty assessed a person who violates the provisions of section 7-12-2 of this chapter shall be recovered by the city in a civil action in the nature of debt, to be brought in the Buncombe County Superior Court if the offender fails to give notice of timely appeal and fails to pay the penalty within the prescribed period of time after he or she has been cited for the violation.

~~(c) *Criminal penalties.*¶~~

~~(1) *Stormwater control, soil erosion and sedimentation control, illicit discharge and connection:* Any person, who knowingly or willfully violates provisions of section 7-12-2 of this chapter, shall be guilty of a misdemeanor, which may include a fine not to exceed $5,000.00.¶~~

~~(2) *Flood protection:* Any person who violates any of the provisions of section 7-5-12 or section 7-12-1 of this chapter shall be guilty of a Class I misdemeanor. Failure to remove any artificial obstruction or enlargement or replacement thereof that violates any of the provisions of section 7-12-1 shall constitute a separate violation for each ten days that such failure continues after written notice from the city.¶~~

~~(3) *Subdivisions:* Any person who, being the owner or agent of the owner of any land located within the planning and regulations jurisdiction of the city, subdivides his/her land in violation of the requirements of section 7-15 of this chapter or who 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 the requirements of this chapter and recorded in the Office of the Register of Deeds for Buncombe County shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument or transfer of other document used in the process of selling or transferring land shall not exempt the transaction from this penalty.¶~~

(c~~d~~) *Each day a separate violation.* Except as indicated in subsection 7-18-2(b)(1) and 7-18(b)(2)(c) above, each day that a violation continues shall constitute a separate and distinct violation or offense.

Sec. 7-18-4. Action for recovery of civil penalty; action for institution of criminal process.

(a) If payment of a civil penalty is not made, or violations are not cured or corrected, within the time specified in the citation, then the matter may be referred to the city attorney for institution of a civil action in the name of the city in a court of competent jurisdiction.

~~(b) If a violation which constitutes a criminal penalty is not cured or corrected within the time specified in the citation, then a criminal action may be instituted in a court of competent jurisdiction.¶~~

Chapter 9 ~~LICENSES~~TAXES, PERMITS AND BUSINESS REGULATIONS[2]

2

ARTICLE I. ~~IN GENERAL~~Specific Taxes

~~**Secs. 9-1—9-25. Reserved.**~~

~~*ARTICLE II. PRIVILEGE LICENSE TAX*~~[3]

~~[3]State law reference(s)—Authority to levy privilege license taxes, G.S. 160A-211.~~

DIVISION 1. GENERALLY¶

Sec. 9-26. Definitions.¶

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: ¶

Business includes each trade, occupation, profession, business and franchise taxed under this article. ¶

Seasonal means a business that is conducted for profit six months out of the year or less. ¶

(Ord. No. 1855, § 1, 6-16-90)¶

Cross reference(s)—Definitions and rules of construction generally, § 1-2. ¶

Sec. 9-27. Purpose; construction of article.¶

This article is enacted for revenue purposes only. Therefore, it should be construed to require payment of the maximum tax permitted under its terms. In addition, issuance of a license in accordance with this article does not excuse a licensee from compliance with any other applicable ordinance or statute. This article does not prevent the city from imposing license taxes on additional businesses, from increasing or decreasing the amount of any license tax or from regulating any business taxed. ¶

(Ord. No. 1855, § 2, 6-16-90)¶

Sec. 9-28. Levy.¶

An annual privilege license tax is hereby levied on each business conducted within this city listed in appendix A of Ordinance No. 1855, as amended, which is attached to such ordinance and made a part of such ordinance in the amounts set forth therein. ¶

(Ord. No. 1855, § 3, 6-16-90; Ord. No. 1918, § 2, 5-21-91)¶

Editor's note(s)—Pursuant to G.S. 160A-77, the privilege license tax schedule, referred to in this section as appendix A, is compiled and published separately by the city as a list of the various trades, occupations, professions, agencies and businesses, together with the amount of tax due. An official copy is on file in the office of the city clerk. ¶

Sec. 9-29. Persons required to pay tax.¶

Each person who conducts a business within the city is subject to this article. A person "conducts a business" when he engages in one act of business taxed under this article. He conducts the business "within the city" if he maintains a business location within the city or if, either personally or through agents, he: ¶

(1) Solicits business within the city limits; or ¶

(2) Picks up or delivers goods or services within the city limits. ¶

(Ord. No. 1855, § 4, 6-16-90)¶

Sec. 9-30. Period of license.¶

(a) *Annual licenses.* Unless the section of this article levying the privilege license tax applicable to a particular business provides otherwise, a license issued in accordance with this article is good for the 12-month period beginning July 1 and ending June 30. The tax is due on July 1 of each year. However, if a person begins a business after July 1 of a year, the tax for that year is due before the business is begun. ¶

(b) *Periods shorter than one year.* If the section of this article levying the privilege license tax applicable to a particular business so provides, a license may be issued for a period of one day, one week or some comparable period of less than a full license year. A person may not commence a business conducted within the city and taxed under such a section until the privilege license tax due is paid and may not continue such a business beyond the period for which the license is issued. ¶

(Ord. No. 1855, § 5, 6-16-90)¶

Sec. 9-31. Proration of tax.¶

If a business is begun after January 31 and before July 1, the amount of tax due is half the amount otherwise due. If a business is seasonal in nature and if the amount of tax is not based on gross receipts, the amount of tax due is half the amount otherwise due. ¶

(Ord. No. 1855, § 6, 6-16-90)¶

Sec. 9-32. Refunds.¶

If for any reason a licensee discontinues the licensed activity during the license year, the licensee is not authorized to a refund; provided, that if discontinuance or cessation of the licensed activity is the direct result of a state statute being adopted after the commencement of the license year that prohibits or makes illegal the licensed activity such that the licensee is required to cease the activity at any point during the license year, then the licensee shall be entitled to a partial refund of taxes paid for the licensed activity, prorated based on the number of months for which the operation was not prohibited by statute. ¶

(Ord. No. 1855, § 7, 6-16-90; Ord. No. 3909, § 1, 10-26-10)¶

Sec. 9-33. Separate businesses.¶

A separate license is required and a separate privilege license tax must be paid for each place of business unless two or more places of business under common ownership are contiguous to each other, communicate directly with and open into each other and are operated as a unit. In addition a separate privilege license tax must be paid for each business taxable under this article conducted by the taxpayer at any one location; however, the tax collector may issue a single license for all taxable businesses conducted at one location by a single taxpayer. ¶

(Ord. No. 1855, § 8, 6-16-90)¶

Sec. 9-34. Computation of tax based on gross receipts.¶

(a) Whenever this article levies a privilege license tax computed on the basis of gross receipts, gross receipts means the amount reported as gross receipts on a business's state income tax return or on the federal income tax return filed with the state income tax return if the state return does not separately state gross receipts for the most recently completed tax year. It shall be the duty of a person applying for the license to render to the finance director or his designee a sworn statement of such gross receipts during the preceding year. ¶

(b) If a business has not been in operation long enough for the information required in subsection (a) of this section to be available, the tax collector shall estimate gross receipts for the business on the basis of gross receipts of comparable businesses or any other information the tax collector considers useful. On or before July 31 immediately after the license year, each licensee who paid the tax for the past license year based on estimated gross receipts shall submit to the tax collector a sworn final report showing the amount of gross receipts for the license year. If the amount shown is more than the estimated gross receipts, the licensee shall pay the amount of the additional tax that would have been due had the estimate been accurate. If the payment shown is less than the estimated gross receipts, the city shall refund to the licensee the difference between the actual tax paid and the amount of tax that would have been due had the estimate been accurate. ¶

(c) All affidavits or other proof of gross receipts furnished to the finance director or his designee pursuant to subsection (b) of this section shall remain privileged and confidential and shall not be disclosed. ¶

(Ord. No. 1855, § 9, 6-16-90; Ord. No. 1918, § 1, 5-21-91)¶

Sec. 9-35. Exemptions.¶

(a) *Generally.* Except as otherwise provided in this section or by state law, no person is exempt from the payment of a privilege license tax levied by this article. ¶

(b) *Charitable organizations.* A person who operates a business for a religious, educational, civic, patriotic, charitable or fraternal purpose, when the entire gross income of the business is used for such a purpose, is exempt from paying any privilege license tax levied by this article. ¶

(c) *Blind persons and members of armed forces and merchant marine.* Blind persons and persons who serve in the United States armed forces or the merchant marine are exempt from paying any privilege license tax levied by this article to the extent provided by G.S. 105-249 and 105-249.1. ¶

(d) *License required.* A person exempt from paying a privilege license tax levied by this article shall nevertheless obtain a license from the tax collector. The license shall state that the licensee is exempt from paying the privilege license tax. ¶

(Ord. No. 1855, § 10, 6-16-90)¶

Sec. 9-136. Tax on gross receipts of automobile rental business.

(a) *Definitions.* In addition to the common meanings of words, the following definitions shall be applicable herein:

(1) *Customer* shall mean any person that leases or rents a vehicle on a short-term lease or rental basis.

(2) *General Statutes* shall refer to the North Carolina General Statues and any reference to a particular section thereof shall include the same as may be from time to time amended, modified, supplemented, revised or superseded.

(3) *Gross receipts* shall mean the amount that is or would be reported as gross receipts on a business's state income tax return, or on the federal income tax return filed with the state income tax return if the state return does not separately state gross receipts for the most recently completed tax year. Taxes collected hereunder are not subject to the tax herein imposed and are not included in gross receipts.

(4) *Lease or rental* shall mean a transfer, for consideration, of the use but not the ownership of property to another for a period of time (G.S. § 105-164.3(7a)).

(5) *Long-term lease or rental* shall mean a lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days (G.S. § 105-187.1(3)).

(6) *Person* shall mean any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

(7) *Short-term lease or rental* shall mean any lease or rental of a vehicle that is not a long-term lease or rental (G.S. § 160A-215.1(e)(2) and G.S. § 105-187.1(4)).

(8) *Tax collector* shall refer to that individual appointed by the governing body pursuant to G.S. § 105-349 to collect taxes on behalf of the City of Asheville and any other person authorized to carry out the duties and functions of such individual.

(9) *Taxpayer* means any person liable for the taxes imposed by this section.

(10) *Vehicle* shall mean any of the following:

a. A motor vehicle of the private passenger type, including a passenger van, minivan, or sport utility vehicle.

b. A motor vehicle of the cargo type, including a cargo van, pickup truck or truck with a gross vehicle weight of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight, and that does not require the operator to possess a commercial drivers license.

c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less (G.S. § 160A-215.1(e)(1)).

(b) *Levy of tax.* A tax is hereby imposed and levied in an amount equal to one and one-half percent of the gross receipts derived from the short-term lease or rental of vehicles at retail to the general public. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. § 160A-211.

(c) *Collection of the tax.* Every person engaged in the business of the short-term lease or rental of vehicles at retail to the general public shall collect at the time of the lease or rental the tax herein levied, place the tax so collected in a segregated account, and thereafter remit such tax to the tax collector in accordance with the provisions of this section. The taxpayer shall include a provision in each retail short-term lease or rental agreement stating that the percentage amount enacted by this section of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipts. The amount of the tax shall be stated separately from the lease or rental and shown separately on the taxpayer's records. The tax shall be paid by the customer to the taxpayer as trustee for and on account of the City of Asheville. The taxpayer shall be liable for the collection thereof and for its payment to the tax collector and the taxpayer's failure to charge or to collect said tax from the customer shall not affect such liability.

(d) *Report and payment of tax.* Tax levies under this section are due and payable when a return is required to be filed. Every taxpayer shall, within the time specified, submit a return to the tax collector on the form prescribed by the tax collector. A return must be signed by the taxpayer or the taxpayer's agent. Returns of taxpayers are due to the tax collector each month on or before the fifteenth day of the month following the month in which the tax accrues. As provided in G.S. § 160A-208.1, a return shall not be considered a public record and information contained in a return may be disclosed only in accordance therewith.

(e) *Taxpayer to keep records.* The taxpayer shall keep and preserve suitable records of the gross receipts received by such taxpayer in the conduct of business and such other books or accounts as may be necessary to determine the amount of the tax for which such taxpayer is liable under the provisions of this section. It shall be the duty of the taxpayer to keep and preserve for a period of three years all such records of gross receipts and other books and accounts described. All records, books and accounts herein described shall be open for examination at all reasonable hours during the day by the tax collector or his duly authorized agent.

(f) *Tax collector to provide forms.* The tax collector shall design, prepare, print and make available to all taxpayers operating within the municipal boundaries of the City of Asheville forms and instructions for filing returns to insure a full collection of and an accounting for taxes due. The failure of any taxpayer to obtain or

receive forms shall not relieve such taxpayer from the payment of the tax at the time and in the manner provided.

(g) *Situs.* The transaction giving rise to the tax herein levied shall be deemed to have occurred at the location of the entity from which the customer takes delivery of the vehicle (G.S. § 160A-215.1(b)).

(h) *Penalties and remedies.* The provisions with respect to remedies and penalties applicable to Subchapter VIII (Local Government Sales and Use Tax) of Chapter 105 of the General Statutes, as contained in Article 5 and Article 9, Subchapter 1, Chapter 105 thereof, shall be applicable in like manner to the tax authorized to be levied and collected under this section, to the extent that the same are not inconsistent with the provisions hereof. The governing body of the City of Asheville may exercise any power the Secretary of Revenue may exercise in collecting sales and use taxes (G.S. § 160A-215.1(f)).

(i) *Administration.* In addition to the provisions herein, the levy and collection of the taxes herein imposed shall be otherwise administered in the same manner as the Sales and Use Tax as provided in Article 5, Subchapter 1, Chapter 105 of the General Statutes (G.S. § 160A-215.1(d)).

Sec. 9-~~37~~2. Tax on gross receipts of heavy equipment rental business.

(a) *Definitions.* In addition to the common meanings of words, the following definitions shall be applicable herein:

(1) "Customer" shall mean any person that leases or rents heavy equipment or a short-term lease or rental basis,

(2) "Finance officer" shall refer to that individual appointed pursuant to G.S. § 159-24, to serve as chief financial officer or other reasonable descriptive title for the City of Asheville and any other person authorized to carry out the duties and functions of such individual.

(3) "General Statutes" shall refer to the North Carolina General Statutes and any reference to a particular section thereof shall include the same as may be from time to time amended, modified, supplemented, revised or superseded.

(4) "Gross receipts" shall mean the amount that is or would be reported as gross receipts on a business's state income tax return, or on the federal income tax return filed with the state income tax return if the state return does not separately state gross receipts for the most recently completed tax year. Taxes-collected hereunder are not subject to the tax herein imposed and are not included in gross receipts.

(5) "Heavy equipment" shall mean earthmoving, construction, or industrial equipment that is mobile, weighs at least 1,500 pounds, and is either:

a. A self-propelled vehicle that is not designed to be driven on a highway; or

b. Industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

The term includes an attachment for heavy equipment, regardless of the weight of the attachment.

(6) "Lease or rental" shall mean a transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term does not include any of the following:

a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

1. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of $100.00 or one percent of the total required payments.

2. The providing of tangible property along with an operator for a fixed or indeterminate period of time if the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property.

(7) "Long-term lease or rental" shall mean a lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.

(8) "Person" shall mean any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, soles proprietorship, company, firm, or other legal entity.

(9) "Short-term lease or rental" shall mean any lease or rental that is not a long-term lease or rental.

(10) "Tax collector" shall refer to that individual appointed by the governing body pursuant to N.C.G.S. 105-349, to collect taxes on behalf of the City of Asheville and any other person authorized to carry out the duties and functions of such individual. The Buncombe County Tax Office is designated as the city's "tax collector" for this ordinance.

(11) "Taxpayer" means any person liable for the taxes imposed by this section.

(b) *Lew of tax.* A tax is hereby imposed and levied in an amount equal to eight tenths percent of the gross receipts derived from the short-term lease or rental of heavy equipment at retail. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. § 160A-211.

(c) *Collection of the tax.* Every person whose principal business is the short-term lease or rental of heavy equipment at retail shall collect at the time of the lease or rental, or at the time of the payment of the consideration therefore, the tax herein levied. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person as defined under G.S. § 105-163.010.

(1) The tax so collected shall be placed in a segregated account, and thereafter remitted to the tax collector in accordance with the provisions of this section. The taxpayer shall include a provision in each retail short-term lease or rental agreement, or other documentation evidencing the transaction, stating that the percentage amount enacted by this section of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipts. The amount of the tax shall be stated separately from the lease or rental and shown separately on the taxpayer's records.

(2) The tax shall be paid by the customer to the taxpayer as trustee for and on account of the City of Asheville. The taxpayer shall be liable for the collection thereof and for its payment to the tax collector and the taxpayer's failure to charge or to collect said tax from the customer shall not affect such liability.

(d) *Report and payment of tax.* Taxes levied under this section are due and payable when a return is required to be filed. Every taxpayer shall, within the time specified, submit a return to the tax collector on the form prescribed by the tax collector. A return must be signed by the taxpayer or the taxpayer's agent. Returns of taxpayers are due to the tax collector for each calendar quarter on or before the last day of the month following the end of the quarter in which the tax accrues. As provided in G.S. § 160A-208.1, a return shall not be considered a public record and information contained in a return may be disclosed only in accordance therewith.

(e) *Taxpayer to keep records.* The taxpayer shall keep and preserve suitable records of the gross receipts received by such taxpayer in the conduct of business and such other books or accounts as may be necessary to determine the amount of the tax for which such taxpayer is liable under the provisions of this section. It shall be the duty of the taxpayer to keep and preserve for a period of three years all such records of gross receipts and other books and accounts described. All records, books and accounts herein described shall be open for

examination at ail reasonable hours during the day by the tax collector or the tax collector's duly authorized agent.

(f) *Tax collector to provide forms.* The tax collector shall design, prepare, print and make available to all taxpayers operating within the municipal boundaries of the City of Asheville forms and instructions for filing returns to insure a full collection of and an accounting for taxes due. The failure of any taxpayer to obtain or receive forms shall not relieve such taxpayer from the payment of the tax at the time and in the manner provided.

(g) *Situs.* Gross receipts from the short-term lease or rental of heavy equipment are subject to the tax imposed by this section if the place of business from which the heavy equipment is delivered is located within the municipal boundaries of the City of Asheville.

(h) *Penalties and remedies.* The provisions with respect to penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes shall be applicable in like manner to the tax authorized to be levied and collected under this section, to the extent that the same are not inconsistent with the provisions hereof. The finance officer may exercise any power the Secretary of Revenue may exercise in imposing these penalties and remedies.

~~Secs. 9-38—9-45. Reserved.~~¶

~~*DIVISION 2. LICENSE*~~¶

~~Sec. 9-46. Application.~~¶

~~A person shall apply to the tax collector for each license required by this article no less than 30 days before the date the tax is due. The application, which shall be submitted on forms provided by the tax collector, shall contain the following:~~ ¶

~~(1) The name of the applicant and whether the applicant is an individual, a partnership, a corporation or some other entity.~~ ¶

~~(2) The nature of the business.~~ ¶

~~(3) Where the business is conducted.~~ ¶

~~(4) An address where notices and statements may be mailed to as required by this article.~~ ¶

~~(5) Whether the business is regulated by a state occupational licensing board subject to G.S. ch. 93B and, if so, the serial number of the state license the applicant currently holds.~~ ¶

~~(6) Any other information the tax collector determines to be necessary to compute the amount of tax due.~~ ¶

~~(Ord. No. 1855, § 11, 6-16-90)~~¶

~~Sec. 9-47. Refusal or revocation.~~¶

~~The tax collector shall refuse to issue a license required under this article or shall revoke such license for either of the following reasons:~~ ¶

~~(1) The applicant misrepresents a fact relevant to the amount of tax due or his qualifications for a license.~~ ¶

~~(2) The applicant refuses to provide information necessary to compute the amount of tax due.~~ ¶

~~(Ord. No. 1855, § 12, 6-16-90)~~¶

Sec. 9-48. Unqualified applicants.¶

(a) After receipt of the completed application, if the tax collector believes that a reason exists for refusing a license under section 9-47, the tax collector shall refuse to accept payment of the tax and shall not issue the license. At the applicant's request, the tax collector shall, in accordance with section 9-57, give the applicant a written statement of the reason for refusing the license. The applicant may, within ten days after the date the statement is received, request a conference to discuss the refusal. In the request the applicant shall specify why the application for a license should not be refused. The tax collector shall arrange the conference within a reasonable time. ¶

(b) If the collector refuses to issue a license, the applicant may reapply for a license at any time thereafter. If the reason for which the application was refused no longer exists and if no other reason exists for refusing to issue a license, the tax collector shall issue the license in compliance with section 9-49. ¶

(Ord. No. 1855, § 13, 6-16-90)¶

Sec. 9-49. Issuance; payment of tax.¶

After receipt of the completed application, if the tax collector believes that no reason exists for refusal of a license under section 9-47, the tax collector shall determine the amount of tax due and notify the applicant of that amount. The tax collector shall not issue a license until the tax is paid. ¶

(Ord. No. 1855, § 14, 6-16-90)¶

Sec. 9-50. Amount of tax disputed.¶

If disputes arise over the amount of the privilege license tax the tax collector determines to be due, the applicant may either refuse to pay and request a conference with the tax collector to discuss the determination or pay the amount and request a conference to discuss the right to a refund. If a conference is requested, the tax collector shall arrange it within a reasonable time. ¶

(Ord. No. 1855, § 15, 6-16-90)¶

Sec. 9-51. Revocation.¶

(a) The tax collector shall revoke a license if a reason exists to revoke it as set forth in section 9-47. Before revoking a license, the tax collector shall give the licensee written notice of the grounds for revocation, in accordance with section 9-57. The licensee may, within ten days after the day on which notice is served, request a conference with the tax collector in writing. The request shall specify the reasons why the license should not be revoked. The tax collector shall arrange the conference within a reasonable time. ¶

(b) If the licensee fails to request a conference within ten days after the day on which notice is served, the tax collector shall revoke the license. If the licensee requests a conference, the tax collector may not revoke the license until after the conference. ¶

(c) If the tax collector revokes a license, the former licensee may apply for a new license at any time thereafter. If the reason for which the license was revoked no longer exists and if no other reason exists for refusing to issue a license, the tax collector shall issue the license in accordance with section 9-49. ¶

(Ord. No. 1855, § 16, 6-16-90)¶

Sec. 9-52. Form and contents of license.¶

A license shall show the name of the person licensed, the place where the business is conducted, if it is to be conducted at one place, the nature of the business licensed, the period for which the license is issued and the amount of tax paid. In addition if a machine is licensed, the license shall show the serial number of the machine. The tax collector shall keep a copy of each license issued. ¶

(Ord. No. 1855, § 17, 6-16-90)¶

Sec. 9-53. Assignments.¶

A license may be assigned if: ¶

(1) A business licensed under this article and carried on at a fixed place is sold as a unit to any person; and ¶

(2) The purchaser is to carry on the same business at the same place. ¶

Such a change shall be reported to the tax collector in accordance with section 9-54. Otherwise, each license issued under this article is a personal privilege and is not assignable. ¶

(Ord. No. 1855, § 18, 6-16-90)¶

Sec. 9-54. Changes in business conducted by licensee during tax year.¶

(a) *Report of change.* A licensee or an assignee shall report a change in the information contained in the license application to the tax collector within ten days after the change occurs. If information shown on the license itself is affected, the licensee or assignee shall surrender the license to the tax collector when reporting the change. ¶

(b) *Changes affecting amount of tax due.* If there are no reasons for revoking the license under section 9-47 and the change results in the imposition of a separate or additional tax, the tax collector shall reissue a license reflecting the change upon payment of the separate or additional tax. ¶

(c) *Changes not affecting amount of tax due.* If there are no reasons for revoking the license under section 9-47 and the change does not result in an imposition of a separate or additional tax, the tax collector shall reissue a license reflecting the change upon payment of a fee as established in the fees and charges manual on file with the city clerk. ¶

(d) *Change requiring refusal of license.* If there is reason for revoking the license under section 9-47, the tax collector shall refuse to reissue a license and shall instead begin proceedings to revoke the license in accordance with section 9-31. ¶

(Ord. No. 1855, § 19, 6-16-90)¶

Sec. 9-55. Duplicates.¶

Upon satisfactory proof that a license has been lost or destroyed, the tax collector shall furnish a duplicate for a fee as established in the fees and charges manual on file in the city clerk's office. ¶

(Ord. No. 1855, § 20, 6-16-90)¶

Sec. 9-56. Record of conferences.¶

The tax collector shall maintain for three years a record of each conference held in accordance with this article. The record shall contain the applicant's or licensee's name, the date of the conference and a brief

statement of the issues discussed and the result reached. After three years, the tax collector shall dispose of the record in accordance with G.S. 121-5. ¶

(Ord. No. 1855, § 21, 6-16-90)¶

Sec. 9-57. Procedure for providing notice to applicant or licensee.¶

Whenever this article requires the tax collector to give a written statement or notice to an applicant or a licensee, the tax collector may do so in one of the following ways: ¶

(1) By personally delivering the statement or notice to the applicant or licensee; ¶

(2) By mailing the statement or notice by registered or certified mail and returning the receipt requested to the address specified for that purpose in the license application; or ¶

(3) By causing the statement or notice to be served on the applicant or licensee in accordance with the procedures for service of process under rule 4, state Rules of Civil Procedure. ¶

(Ord. No. 1855, § 22, 6-16-90)¶

Secs. 9-58—9-70. Reserved.¶

DIVISION 3. ENFORCEMENT AND COLLECTION¶

Sec. 9-71. Duty to determine whether tax due.¶

Each person has the duty to determine whether the business he conducts is taxed under this article and, if so, whether that tax has been paid for the current tax year. ¶

(Ord. No. 1855, § 23, 6-16-90)¶

Sec. 9-72. Investigations.¶

If the tax collector has reason to believe that a person is conducting a business in the city in violation of this article, the tax collector shall conduct an investigation to determine the person's tax liability. ¶

(Ord. No. 1855, § 24, 6-16-90)¶

Sec. 9-73. Keeping books.¶

Each person who conducts a business taxed under this article shall keep all records and books necessary to compute the tax liability. If a person fails to keep books and records as required, the tax collector shall make a determination of that person's tax liability from the information available. ¶

(Ord. No. 1855, § 25, 6-16-90)¶

Sec. 9-74. Inspections.¶

Each person who conducts business in the city shall permit the tax collector to inspect the business premises during normal business hours to determine the nature of the business conducted there and to examine the books and records to determine the nature and amount of business transacted. ¶

(Ord. No. 1855, § 26, 6-16-90)¶

Sec. 9-75. Posting license.¶

A licensee shall post the privilege license conspicuously in the place of business licensed. If the licensee has no regular place of business, the license must be kept where it may be inspected at all times by the proper city officials. If a machine is licensed, the license shall be affixed to the machine. ¶

(Ord. No. 1855, § 27, 6-16-90)¶

Sec. 9-76. Notice of deficiency.¶

If the tax collector determines that a person has not paid the full amount of tax due under this article, either for the current license year or for a prior license year, the tax collector shall give the person written notice of the deficiency, in accordance with section 9-57. The notice of deficiency shall specify the following: ¶

(1) The total amount of tax due; ¶

(2) The section of this article upon which the tax is based; ¶

(3) The amount of tax paid; ¶

(4) Any interest due; ¶

(5) The balance owed; ¶

(6) The manner and time period in which the person may respond to the notice of the deficiency; and ¶

(7) The consequences of failing to respond as specified. ¶

(Ord. No. 1855, § 28, 6-16-90)¶

Sec. 9-77. Request for conference.¶

The person receiving notice of the privilege license tax deficiency may, within ten days after the day on which notice is served, request a conference in writing. The request shall specify the person's objections to the notice of deficiency. By way of illustration but not limitation, the person who receives notice of a deficiency may object on the following grounds: ¶

(1) The tax due has already been paid; ¶

(2) The tax collector miscalculated the amount of tax due; ¶

(3) The tax collector based his calculations on incorrect or insufficient information concerning either the nature or the amount of business conducted; or ¶

(4) The tax collector based the determination on an erroneous interpretation of a section of this article that establishes a category of business subject to a particular tax. ¶

(Ord. No. 1855, § 29, 6-16-90)¶

Sec. 9-78. Finality of deficiency determination.¶

If the taxpayer fails to request a conference under section 9-77, the privilege license tax deficiency becomes final and the tax collector shall proceed to collect the deficiency. ¶

(Ord. No. 1855, § 30, 6-16-90)¶

Sec. 9-79. Conference.¶

If the taxpayer requests a conference, the tax collector shall not proceed to collect the privilege license tax deficiency until hearing the taxpayer's objections and determining that the deficiency should become final. The tax collector shall maintain a record of each conference held for three years in accordance with section 9-77. The record shall contain the name of the taxpayer, the date of the conference, a brief statement of the issues discussed and the results of the discussion. After three years, the tax collector shall dispose of the record in compliance with G.S. 121-5. ¶

(Ord. No. 1855, § 31, 6-16-90)¶

Sec. 9-80. Collection of deficiency.¶

(a) The tax collector may use any of the following methods to collect a privilege license tax deficiency: ¶

(1) Criminal prosecution in accordance with section 9-81(a); ¶

(2) Equitable relief in accordance with section 9-81(b); ¶

(3) The remedies of levy, sale, attachment and garnishment in accordance with G.S. 160A-207; or ¶

(4) The remedies of levy and sale of real and personal property of the taxpayer within the city in accordance with the provisions of G.S. 105-109. ¶

(b) Any person who commences or continues to conduct a business taxed under this article without payment of the tax is liable for the additional tax of five percent every 30 days as imposed by G.S. 105-109. ¶

(Ord. No. 1855, § 32, 6-16-90)¶

Sec. 9-81. Enforcement.¶

(a) *Criminal remedies.* Conducting business within this city without having paid the privilege license tax imposed by this article or without a valid license issued in accordance with this article or without posting a license in compliance with section 9-75 is a misdemeanor, punishable as provided in G.S. 105-109. Each day that a person conducts business in violation of this article is a separate offense. Payment of a fine imposed in criminal proceedings in accordance with this section does not relieve a person of the liability for taxes imposed under this article. ¶

(b) *Equitable remedies.* In addition to the criminal remedies set forth in subsection (a) of this section and in compliance with G.S. 160A-175(d), the city may seek an injunction against any person who conducts a business in violation of this article. ¶

(Ord. No. 1855, § 33, 6-16-90)¶

Secs. 9-82—9-130. Reserved.¶

ARTICLE III. MASSAGE AND BODYWORK THERAPY REGULATIONS[4]¶

¶

[4]Editor's note(s)—Ord. No. 4170, § 1, adopted Mar. 12, 2013, repealed the former Art. III, §§ 9-131—9-149, and enacted a new Art. III as set out herein. The former Art. III pertained to similar subject matter and derived from Ord. No. 2218, § 2, adopted June 13, 1995, and Ord. No. 2314, adopted Aug. 27, 1996. ¶

Sec. 9-131. Purpose and objective.¶

The City of Asheville recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. In the interest of public health, safety, welfare and morals, the following provisions and regulations are hereby adopted. ¶

(Ord. No. 4170, § 1(a), 3-12-13)¶

Sec. 9-132. Definitions.¶

As used in this article, the terms defined in this section shall have the following meanings ascribed to them: ¶

Massage and bodywork therapy means systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include: ¶

(1) Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement. ¶

(2) Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations. ¶

(3) The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands. ¶

Massage and bodywork therapist means a person licensed pursuant to Article 36 of Chapter 90 of the North Carolina General Statutes. ¶

Massage and bodywork therapist establishment/business means any establishment or business wherein massage and bodywork therapy is offered or practiced, including, but not limited to, establishments commonly known as health clubs, physical culture studios, massage studios, massage parlors, or similar establishments by whatever name designated. ¶

Practice/profession of massage and bodywork therapy means the application of massage and bodywork therapy to any person for a fee or other consideration. This does not include any of the procedures, practices or activities listed in N.C.G.S. sec. 90-623(d). ¶

Private parts means the anus, penis, scrotum, mons veneris, vulva or vaginal area. ¶

(Ord. No. 4170, § 1(b), 3-12-13)¶

Sec. 9-133. Reserved.¶

Sec. 9-134. License.¶

Any person practicing the profession of massage and bodywork therapy shall have a current state massage and bodywork therapy license issued pursuant to Article 36 of Chapter 90 of the North Carolina General Statutes, unless exempted pursuant to N.C.G.S. sec. 90-624. ¶

Any person practicing the profession of massage and bodywork therapy who has a current state massage and bodywork license issued pursuant to Article 36 of Chapter 90 of the North Carolina General Statutes is exempt from a city privilege license tax. ¶

(Ord. No. 4170, § 1(c), 3-12-13)¶

Sec. 9-135. Hours of operation.¶

No massage and bodywork therapist or massage and bodywork therapy establishment shall engage in massage and bodywork therapy on any person or engage in the practice or profession of massage and bodywork therapy before 5:00 a.m. or after 11:30 p.m. ¶

(Ord. No. 4170, § 1(d), 3-12-13)¶

Sec. 9-136. Massage of private parts for hire prohibited.¶

It shall be unlawful for any person to massage or to offer to massage the private parts of another for hire. ¶

(Ord. No. 4170, § 1(e), 3-12-13)¶

Sec. 9-137. Patronage of massage businesses by minors; employment of minors.¶

(a) No massage and bodywork therapist or massage and bodywork therapy establishment shall massage or treat any person under the age of 18 years, or permit or condone such treatment, except when the parent or guardian of the person under 18 accompanies the person under the age of 18 during the massage treatment or upon written order of a licensed physician, osteopath, chiropractor, podiatrist, or registered physical therapist, such order being dated and in the possession of the person giving the massage or treatment. ¶

(b) No massage and bodywork therapist or massage and bodywork therapy establishment shall employ any person under the age of 18 years in the practice or profession of massage and bodywork therapy. ¶

(Ord. No. 4170, § 1(f), 3-12-13)¶

Sec. 9-138. Display of licensure.¶

Every massage and bodywork therapist shall display the current state massage and bodywork therapy license issued pursuant to Article 36 of Chapter 90 of the North Carolina General Statutes in a prominent place at his or her primary place of business/establishment so as to be visible for inspection. Massage and bodywork therapists providing massage and bodywork therapy outside their primary business/establishment location or at the location of clients, shall have a copy of the license available for inspection upon request. ¶

(Ord. No. 4170, § 1(g), 3-12-13)¶

Sec. 9-139. Penalties.¶

Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C.G.S. sec. 14-4. ¶

(Ord. No. 4170, § 1(h), 3-12-13)¶

Secs. 9-140—9-170. Reserved.¶

ARTICLE IV. ADULT ESTABLISHMENTS[5]¶

[5]Editor's note(s)—Ord. No. 2176, § 1, adopted Jan. 24, 1995, repealed Art. IV, §§ 9-171—9-181, which pertained to topless establishments and enacted provisions designated as a new Art. IV, to read as herein set out. See the Code Comparative Table. ¶

State law reference(s)—Adult establishments, G.S. 14-202.10 et seq. ¶

Sec. 9-171. Purpose.¶

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

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

(Ord. No. 2176, § 1, 1-24-95)¶

Sec. 9-172. Definitions.¶

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: ¶

Adult bookstore means a bookstore: ¶

(1) Which receives a majority of its gross income during any calendar month from the sale of publications (including books, magazines, and other periodicals) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, or ¶

(2) Having as a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section. ¶

Adult establishment means an adult bookstore, adult motion picture theatre, adult mini motion picture theatre or adult live entertainment business as defined in this section. ¶

Adult live entertainment means any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section. ¶

Adult live entertainment business means any establishment or business wherein adult live entertainment is shown for observation by patrons. ¶

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

Adult mini motion picture theatre means an enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an

emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons therein. ¶

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

Revenue manager means the city employee who is assigned by the city manager as being responsible for enforcement of this article. ¶

Sexually oriented devices means without limitation any artificial or simulated specified anatomical area or their device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device. ¶

Specified anatomical areas means: ¶

(1) Less than completely and opaquely covered: ¶

a. Human genitals, pubic region, ¶

b. Buttock, or ¶

c. Female breast below a point immediately above the top of the areola; or ¶

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

Specified sexual activities means: ¶

(1) Human genitals in a state of sexual stimulation or arousal; ¶

(2) Acts of human masturbation, sexual intercourse or sodomy; or ¶

(3) Fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts. ¶

(Ord. No. 2176, § 1, 1-24-95)¶

Sec. 9-173. Application for licenses.¶

(a) *Business license.*¶

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

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

(3) It shall be prima facie evidence that any adult establishment that fails to have posted, in the manner required by this article, an adult establishment license, has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer who performs any service or entertainment in an adult establishment in which an adult establishment license is not posted, in the manner required by this article, had knowledge that such business was not licensed. ¶

(b) *Entertainer license.* It is unlawful for any person to work as an entertainer at an adult establishment without first obtaining a license to do so from the city, or to work as an entertainer at an adult establishment after such person's license to do so has been revoked or suspended by the city or has expired. ¶

(c) *License classification and fees.*¶

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

(2) All licenses shall be issued for a specific location and/or person and shall be nonrefundable and nontransferable; however, entertainers may obtain a permit, without paying an additional fee, to transfer to another adult establishment. ¶

(3) The license fees shall be as set by the city council from time to time and posted in the fees and charges manual. ¶

(Ord. No. 2176, § 1, 1-24-95)¶

Sec. 9-174. Application procedures.¶

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

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

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

(3) The names, residence addresses for the past two years, social security numbers and dates of births of all partners, if the applicant is a partnership, and if the applicant is a corporation, the same information for all corporate officers and directors. ¶

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

a. A felony criminal act within five years immediately preceding the application, or ¶

b. A misdemeanor criminal act within two years immediately preceding the application, ¶

where such felony or misdemeanor criminal act involved sexual offenses, prostitution, promotion of prostitution, sexual abuse of a child, pornography or related offenses as defined in the laws of North Carolina or any other comparable violation of the laws of this state or the laws of any other state. ¶

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

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

(7) A statement signed under oath that the applicant consents to investigation of his/her background by the city. ¶

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

(b) *Adult entertainer license.* All persons desiring to secure a license under the provisions of this article to be an entertainer shall make a verified application to the revenue manager. All applications shall be submitted in the name of the person proposing to be an entertainer. All applications shall be submitted on a form supplied by the revenue manager and shall require the following information: ¶

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

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

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

a. A felony criminal act within five years immediately preceding the application, or ¶

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

(4) Photographs shall be taken of the applicant by the revenue manager and the revenue manager shall process and retain the copies. ¶

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

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

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

c. An official and valid passport issued by the United States of America; ¶

d. An immigration card issued by the United States of America; ¶

e. Any other form of picture identification issued by a governmental entity that is deemed reliable by the revenue manager; or ¶

f. Any other form of identification deemed reliable by the revenue manager. ¶

(6) A statement signed under oath that the applicant consents to investigation of his/her background by the city. ¶

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

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

(1) In the case of an application for a license for an adult establishment, the revenue manager shall: ¶

a. Transmit a copy of the application to the planning director and to the police chief. ¶

b. The planning director shall report to the revenue manager no later than 30 working days after the receipt of the application by the planning director whether or not a proposed adult establishment complies with the requirements of the zoning ordinance regarding location of the adult establishment. In the event that the planning director fails to report to the revenue manager within this time period, the revenue manager shall proceed with processing the application. ¶

c. The police chief shall report to the revenue manager no later than ten working days after the receipt of the application by the police chief the results of his/her investigation of the applicant. In the event that the police chief fails to report to the revenue manager within this time period, the revenue manager shall proceed with processing the application. ¶

d. Upon completion of his/her investigation, payment of the applicable license fee, and upon receipt of the report of the planning director and the police chief (or upon expiration of either or both time periods referenced above without receiving a report), the revenue manager shall determine whether or not a license shall be issued. In no event shall the time period for determination by the revenue manager exceed 45 days from the date the application is received by the revenue manager, unless consented to by the applicant. ¶

(2) In the case of an application for a license for an entertainer, the revenue manager shall: ¶

a. Transmit a copy of the application to the police chief. ¶

b. The police chief shall report to the revenue manager no later than five workings days after receipt of the application by the police chief the results of his/her investigation of the applicant. In the event that the police chief fails to report to the revenue manager within this time period, the revenue manager shall proceed with processing the application. ¶

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

(d) *Reasons for disapproval.* The revenue manager must deny the license application for one or more of the following reasons: ¶

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

(2) The applicant (including any partners, corporate officers and directors, where applicable), has been convicted of a crime in the local, state or federal court systems for any violations listed in this section 9-174. ¶

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

(e) *Notice of approval or disapproval.* ¶

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

(2) In the event an application is disapproved, the applicant shall have 30 days from the receipt of the notice of disapproval to appeal that determination to the Superior Court of Buncombe County. ¶

(f) *Changes to application.* All applicants shall notify the revenue manager of any changes to the application within five working days of the date the change occurs. ¶

(g) *Police authority regarding criminal history information for applicants for adult establishment and entertainer licenses.* The police department shall be authorized to seek state access to SBI/DCI Criminal History Record Information to obtain criminal history information on all persons applying for an adult establishment license and an adult entertainer liscense to assist the revenue manger in determining the suitablity of each applicant. ¶

(Ord. No. 2176, § 1, 1-24-95; Ord. No. 3639, § 1, 7-22-08)¶

Sec. 9-175. Prohibited acts and conduct.¶

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

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

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

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

(e) No owner, operator, manager or other person in charge of the premises of an adult entertainment premises shall knowingly allow or permit any person under the age of 21 years of age to be in or upon the premises or knowingly allow or permit a violation of this article. ¶

(f) Where any adult establishment provides or contains booths designed for individual or private viewing of adult motion pictures, adult live entertainment, specified anatomic areas, or specified sexual activities, said booths must be designed and situated so that the area occupied by the patron is visible at all times from a central location within the establishment, and may not have a door, curtain or other device that shields the patron from view. ¶

(g) Any entertainer as defined herein, must keep his or her pubic region and genital area fully and opaquely covered at all times during any adult live entertainment, exhibition, show, or performance in an adult establishment. Other employees of adult establishments, including servers of alcoholic beverages, must keep their specified anatomic areas fully and opaquely covered while in the public areas of the adult establishment. ¶

(h) No person in an adult establishment who is not engaged in adult live entertainment, or an exhibition, show or performance may expose any specified anatomic areas in any public area of an adult establishment. ¶

(i) No entertainer in an adult establishment may touch a patron unless the entertainer's specified anatomic areas are fully and opaquely covered. ¶

(j) No other activity associated with an adult establishment may be conducted on the same premises as the adult establishment unless said activity is conducted within the same permanent enclosure housing the adult

establishment. This limitation shall not apply to such activities as parking, building maintenance and other common incidents of premises use and occupancy. ¶

(Ord. No. 2176, § 1, 1-24-95; Ord. No. 2580, § 1, 6-8-99)¶

Sec. 9-176. License; posting and display.¶

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

(b) Every person holding a license as an entertainer shall post his or her license in his or her work area on the adult establishment premises so it shall be readily available for inspection by city authorities responsible for enforcement of this article. ¶

(Ord. No. 2176, § 1, 1-24-95)¶

Sec. 9-177. Inspections.¶

All adult establishments shall permit representatives of the city finance and police departments, acting in their official capacity, to inspect the premises as necessary to ensure that the business is complying with all applicable regulations and laws. ¶

(Ord. No. 2176, § 1, 1-24-95)¶

Sec. 9-178. Suspension or revocation of licenses.¶

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

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

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

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

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

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

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

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

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

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

(2) Revoke the license; or ¶

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

(4) Take no action. ¶

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

(d) In the event of suspension or revocation of the license or the placement on administrative probation, the licensee shall have the right to appeal that determination to the Superior Court of Buncombe County within 30 days of receipt of the notice of suspension, revocation or probation. ¶

(Ord. No. 2176, § 1, 1-24-95)¶

Sec. 9-179. License renewal.¶

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

(b) Upon timely and proper application for renewal and the payment in full of the license fee, the revenue manager shall issue to the applicant a receipt showing the date of the renewal application and granting to the applicant a temporary extension of the license for a period of 45 days or until the application for renewal is approved or disapproved. Any license issued under the provisions of this article may be renewed by issuance of a new license for an additional 12-month period. All applications for renewal of licenses shall be processed in the manner provided for the issuance of the initial license, including the requirements for photographs, and must comply with and satisfy the qualifications for licenses specified in this article. ¶

(c) If the application for renewal of a license is not made during the time provided in subsection (a) herein, then the license shall expire upon the effective expiration date, and a new license application shall then be required to re-issue any expired license. ¶

(Ord. No. 2176, § 1, 1-24-95)¶

Sec. 9-180. Violations and penalties.¶

Any person violating any provision of this article shall, upon conviction, be guilty of a Class 3 misdemeanor and be punishable by a fine not to exceed $500.00 or imprisoned for not more than 30 days. Each day such violation shall continue shall constitute a separate offense. ¶

(Ord. No. 2176, § 1, 1-24-95)¶

Secs. 9-181—9-200. Reserved.¶

Sec. 9-204. Fees; interest rates.

(a) No pawnbroker shall demand or receive an effective rate of interest greater than two percent per month, and no other charge of any description or for any purpose shall be made by the pawnbroker, except that the

pawnbroker may charge, contract for and recover an additional monthly fee for the following services, including but not limited to:

(1) Title investigation;

(2) Handling, appraisal and storage;

(3) Insuring a security;

(4) Application fee;

(5) Making daily reports to local law enforcement officers; and

(6) For other expenses, including losses of every nature, and all other services.

(b) In no event may the total of the monthly fees on a pawn transaction listed in subsection (a) of this section exceed 20 percent of the principal up to a maximum of the following:

First month$100.00

Second month75.00

Third month75.00

Fourth month and thereafter50.00

(c) Pawnbrokers may also charge fees for returned checks as allowed by ~~G.S~~N.C. Gen. Stat § . 25-3-~~512~~506.

Sec. 9-206. Prohibitions.

A pawnbroker shall not:

(1) Accept a pledge from a person under the age of 18 years;

(2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;

(3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this article;

(4) Fail to exercise reasonable care to protect pledged goods from loss or damage;

(5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. If such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with merchandise of like kind and equivalent value. If the pledgor and pawnbroker cannot agree as to replacement, the pawnbroker shall reimburse the pledgor in the amount of the value agreed upon pursuant to section 9-~~9~~203;

(6) Take any article in pawn, pledge or as security from any person, which article is known to such pawnbroker to be stolen, unless there is a written agreement with local or state police;

(7) Sell, exchange, barter or remove from the pawnshop any goods pledged, pawned or purchased earlier than 48 hours after the transaction, except in case of redemption by the pledgor or for items purchased for resale from wholesalers;

(8) Operate more than one pawnshop under one license, and each shop must be at a permanent place of business; or

(9) Take as pledged goods any manufactured home, recreational vehicle or motor vehicle, other than a motorcycle.

Sec. 9-207. Penalties.

(a) Pursuant to N.C. Gen. Stat. sec. 91A-11, every person, their guests or employees, who shall knowingly violate any of the provisions of this article shall, on conviction thereof, be deemed guilty of a misdemeanor and shall be fined a sum not to exceed $500.00 for each offense, and at the discretion of the court, may be imprisoned for a period of time not to exceed six months. If the violation is by an owner or major stockholder or managing partner of the pawnshop and the violation is knowingly committed by the owner, major stockholder or managing partner of the pawnshop, the license of the pawnshop may be suspended at the discretion of the court.

(b) Subsection (a) of this section shall not apply to violations of section 9-~~206~~12(6), which shall be prosecuted under the state criminal statutes.

(c) In addition to the penalties set forth in subsections (a) and (b) of this section, violation of any of the provisions of this article shall also result in revocation of the license.

(d) Any contract of pawn, the making or collecting of which violates any provision of this article, except as a result of accidental or bona fide error of computation, shall be void, and the licensee shall have no right to collect, receive or retain any interest or fee whatsoever with respect to such pawn.

Sec. 10-29. Abandoned vehicle unlawful; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be abandoned as the term is defined herein.

(b) Upon investigation, the proper authorizing officials as defined herein may determine that a vehicle is an abandoned vehicle pursuant to the provisions set forth in this article and order the vehicle removed.

(c) Once a motor vehicle has been designated as an abandoned motor vehicle on the public streets and highways within the city and on property owned or operated by the city, such designation shall be a valid determination for a 12-month period and shall require no additional notice beyond the initial notice to cause its immediate removal.

(d) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 10-30. Junked motor vehicle unlawful; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle to leave or allow the vehicle to remain on the property after it has been declared a junked motor vehicle by the proper authorizing official as set forth in this article. Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

(b) Upon investigation, the planning and development director may determine and declare that a motor vehicle is junked. If the planning and development director determines that the vehicle is junked, the planning and development director may then determine that the vehicle is a health or safety hazard and order the vehicle removed if one or more of the following conditions apply:

(1) A breeding ground or harbor for mosquitoes, insects, snakes, rats or other pests, or being used for storage in a manner which may attract such pests; or

(2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height; or

(3) A point of collection of pools or ponds of water; or

(4) A point of concentration or source of leaking of concentrated gasoline, oil or other flammable or explosive materials; or

(5) So situated or located that there is a danger of it failing or turning over; or

(6) One which is a source of danger for children through entrapment in areas of confinement that cannot be opened from the inside, or from exposed surfaces of metal, glass or other jagged materials; or

(7) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass.

Sec. 10-31. Aesthetic junked motor vehicle regulated; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to the possession of an aesthetic junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which an aesthetic junked vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed. Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

(b) Upon investigation, the planning and development director may order the removal of an aesthetic junked motor vehicle as defined herein after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss to the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following among other relevant facts may be considered:

(1) Protection of property values;

(2) Promotion of tourism and other economic developments opportunities;

(3) Indirect protection of public health and safety which may be indicated when one or more of the following conditions exist:

a. A breeding ground or harbor for mosquitoes, insects, snakes, rats or other pests, or being used for storage in a manner which may attract such pests; or

b. A point of heavy growth of weeds or other noxious vegetation over eight inches in height; or

c. A point of collection of pools or ponds of water; or

d. A point of concentration or source of leaking of concentrated gasoline, oil or other flammable or explosive materials; or

e. So situated or located that there is a danger of it falling or turning over; or

f. One which is a source of danger for children through entrapment in areas of confinement that cannot be opened from the inside, or from exposed surfaces of metal, glass or other jagged materials; or

(4) Preservation of the character and integrity of the community; and

(5) Promotion of the comfort, happiness and emotional stability of area residents.

Sec. 10-43. Unlawful removal of impounded vehicle.

(a) It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the city any vehicle which has been impounded pursuant to the provisions of this article unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat § 14-4.

Sec. 11-1. Advertisements—Posting on public or semipublic property.

(a) It shall be unlawful for any person to attach, place, post, paint, write, stamp, paste or in any manner affix or cause to be affixed any sign, advertisement, circular, bill or other matter upon any structure of a public or semipublic nature, including but not limited to lampposts, telegraph or telephone poles, electric light poles or supports, trees, fire hydrants, bridges or supports thereunder, pavements, sidewalks, buildings or any other structures or property belonging to the city.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 11-2. Same—Posting on private property without consent of owner.

(a) It shall be unlawful for any person to attach, place, paint, write, stamp, post, paste or in any manner affix or cause to be affixed any sign, advertisement, circular, bill or other matter to any privately owned property, including but not limited to any house or part thereof, building, wall, fence or part thereof, post, tree or other structure, without first obtaining written permission of the owner or his authorized agent to do so.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

~~Sec. 11-4. Advertising by distribution of samples or printed matter.¶~~

~~(a) It shall be unlawful for any person to advertise by the distribution of samples or printed matter within the city, except as provided in the annual license and privilege tax ordinance.¶~~

~~(Code 1965, § 18-4)¶~~

Sec. 11-6. Damaging or destroying property.

(a) It shall be unlawful for any person to mutilate, deface, tear down, injure or otherwise damage or destroy any property, real or personal, belonging to another, whether such property is privately or publicly owned.

(b) ~~V~~iolation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.¶

~~(c)~~ ¶

Sec. 11-7. Discharge of firearms or weapons.

No person shall shoot or discharge, within the corporate limits of the city, any firearm, gun, rifle, pistol, air rifle, spring gun or compressed air rifle or pistol or other similar device or weapon which impels or discharges with force any bullet, shot or pellet of any kind, including arrows with metallic tips or sharp tips of any nature, designed to penetrate and propelled by a bow or spring device.

(a) This section shall not apply to any law enforcement officer of any governmental agency or body charged with the duties of protecting life or property or enforcing laws and regulations while engaged in the performance of his official duty.

(b) This section shall not apply in defending one's self or property or the safety and property of others nor to a firing or archery range operated or supervised by an individual, club or organization for educational or sporting purposes, if such firing or archery range has first been inspected and approved by the police department.

(c) This section shall not apply, to deer hunting by bow and arrow or crossbow ("collectively archery"), as defined by the North Carolina Wildlife Resources Commission, on private property, solely for the purpose of controlling the deer population (and no other wildlife), and further complies with the restrictions described below. This exception shall apply only during the Western Deer Season, or outside of season with a valid depredation permit issued by the N.C. Wildlife Resource Commission. A person may engage in deer archery on his or her own property if he or she has on his or her person a valid hunting licenses and written notice to proceed issued by Asheville Police Department ("APD"), or on the property of another in their absence if he or she has on his or her person a valid hunting license, written permission from the property owner or the property owner's authorized agent or manager, and written notice to proceed issued by the APD described in this section. Parcels or tracts of land that are either owned by a person engaged in deer archery or for which that person has been given written permission to hunt shall be hereinafter referred to as the "property of consent." Archery may be permitted if all of the following conditions are met:

(1) The property of consent must be twenty (20) acres or greater in area and may be comprised of contiguous parcels or tracts; and

(2) Deer Archery must be conducted from a permanent or portable elevated platform of at least ten (10) feet above the ground; and

(3) No arrow shall be discharged within two hundred and fifty (250) feet from any residential dwelling, public right of way, street, highway, school, church, government property, occupied structure, park, or other recreational area, nor shall any arrow be discharged within two hundred and fifty (250) feet of the perimeter of the property of consent; and

(4) No deer archery shall commence without a posting, located as to sufficiently alert the public, that hunting by archery is occurring on the property of consent; and

(5) There is a valid hunting season in effect, or by valid depredation permit issued by the N.C. Wildlife Resource Commission, for which the hunting license applies at the time the bow or crossbow is discharged; and

(6) Hunters shall make every reasonable effort to track wounded deer for the purposes of completing the harvest and recovering the carcass; and

(7) The Hunter adheres to all applicable state and local regulations; and

(8) The person discharging the bow or crossbow exercises reasonable regard for the safety and property of other persons.

Prior to commencing any deer archery activity on the property of consent, the Property Owner or third party with property owner's consent, must present all of the aforementioned documentation (i.e. proof property size, written permission, copy of hunting license, depredation permit) to the Asheville Police Department ("APD") for review and approval. APD may inspect the property as part of this approval process. If approved, APD may issue a written notice to proceed to the Property Owner.

(d) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

~~Sec. 11-9. Profanity in public.~~¶

~~No person shall engage in loud or boisterous cursing or swearing in any public place in the city.~~ ¶

~~(Code 1965, § 18-16)~~¶

~~State law reference(s)—Unlawful use of profane language on passenger trains, G.S. 14-195, using profane or indecent language on public highways, G.S. 14-197.~~ ¶

Sec. 11-10. Wells and holes.

(a) No owner, occupant or tenant in possession of any lot, piece or parcel of ground within the city shall have, make or maintain on such lot, piece or parcel of ground any well, hole or other excavation more than three feet deep, unless the excavation is securely enclosed by railing or otherwise to keep persons or animals from falling into the excavation.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 11-14. Solicitation from streets and median strips.

(a) No person shall stand in a roadway or median strip for the purpose of soliciting a ride, employment or business from the occupant of any vehicle.

(b) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway or parking lot.

(c) It shall be unlawful for any person to stand, sit or loiter in any street or highway, including the shoulders or median strip but excluding sidewalks, and to stop or attempt to stop any vehicle for the purpose of soliciting or accepting contributions from the occupants of any vehicle or for the purpose of distributing merchandise to the occupants of any vehicle. It also shall be unlawful for any person to stand, sit or loiter in any street or highway, including the shoulders or median strip but excluding sidewalks, and to solicit or accept contributions from the occupants of any stopped vehicle or to distribute merchandise to the occupants of any stopped vehicle without a permit issued pursuant to N.C. Gen. Stat. § 20-175(e).

(d) If any person is found to have violated any provision of this ordinance, such person or persons shall be guilty of a class 3 misdemeanor and shall be fined not more than $500.00. Each violation shall constitute a separate offense.

Sec. 12-28. Unlawful entry.

(a) It shall be unlawful for any person to climb over any fence around or in any park or enter any park in any manner except through the regular entrances designated for the admission of persons to the park.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

~~Sec. 12-29. Failure to pay admission fee to game.¶~~

~~It shall be unlawful for any person to go, stand, sit or loiter in any park for the purpose of watching any game being played in the park, to which an admission fee is charged, without paying the admission fee provided therefor. ¶~~

Sec. 12-30. Unlawful entry on playing field.

(a) It shall be unlawful for any person, except the players, officials, coaches and other authorized persons, to climb over or go over or under any safety fence erected near any baseball diamond, football field or other field on which a game is being played in any park or to stand or go on such field whereon a game is being played or between the safety fence and field whereon a game is being played at any time when a game is being played.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

~~Sec. 12-31. Use of amusement or pleasure devices.¶~~

~~It shall be unlawful for any person to ride or undertake to ride on any amusement or pleasure device in any park or in any manner interfere with or use any such device, without paying the fee or prescribed charge, or to violate any of the rules and regulations prescribed by the city council in connection with the operation of any such device. ¶~~

Sec. 12-32. Parking and traffic rules.

(a) It shall be unlawful for any person to refuse to comply with any of the parking or traffic rules and regulations prescribed by the director of parks, recreation and public facilities or by the city council in any park or to park or attempt to park any vehicle in any area or space in a park, except in such places as are designated for parking and plainly marked as a parking space.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 12-33. Swimming in designated areas.

(a) It shall be unlawful for any person to go bathing or swimming in any lake or other body of water, except regularly designated swimming pools, in any park; provided, however, if the city council designates or establishes bathing beaches on any such lakes or bodies of water, then bathing or swimming may be permitted under such rules and regulations as the council may determine.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 12-34. Fishing.

(a) It shall be unlawful for any person to fish or attempt to fish in any lake or body of water in any park; provided, however, that nothing in this section shall prohibit the city council from permitting fishing under such rules and regulations as it may determine.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 12-35. Boating.

(a) It shall be unlawful for any person to place any boat or canoe or other water conveyance on any lake or body of water in any park; provided, however, that nothing in this section shall prohibit the city from operating boats, canoes or other water conveyances on such lakes or bodies of water under such rules and regulations as the city council may prescribe.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 12-36. Damaging property.

(a) It shall be unlawful for any person to write on, cut, deface, injure or break any part of any building, grandstand or other structure or any chair, seat or bench or any fence, railing or support of any kind in or around any park.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 12-37. Damaging vegetation.

(a) It shall be unlawful for any person to pick, break, walk or step on or in any way injure or destroy any shrub, flower or bush in any park.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 12-38. Interfering with or annoying birds, animals or reptiles.

(a) It shall be unlawful for any person to interfere with or annoy any birds, animals or reptiles housed or kept in any park.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 12-39. Throwing balls or hard substances.

(a) It shall be unlawful for any person to throw or break any bottle or throw any rock, ball or other hard substance in any park. This section shall not prohibit the throwing or using of any ball or substance when thrown or used in the ordinary playing of a game or in practicing therefor.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

~~Sec. 12-40. Gambling.~~ ¶

~~It shall be unlawful for any person to bet or wager on any game of skill or chance or engage in any game of chance in any park.~~ ¶

Sec. 12-41. Closing time.

(a) All public parks within the corporate limits of the city shall be closed to the general public between the hours of 10:00 p.m. and 6:00 a.m. daily, and it shall be unlawful for any person to remain in or to enter such public parks between such hours, provided that the provisions of this section shall not apply to the following:

(1) Employees or those employed by the city to maintain, protect or conserve such public parks in the regular performance of their duties.

(2) Any public park or portion thereof where prior permission has been obtained from the director of parks, recreation and public facilities for an activity to extend beyond 10:00 p.m.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 12-42. Firearms and weapons.

(a) *Prohibition.*

(1) *Weapons on city property.* It shall be unlawful for any person to willfully and intentionally carry, possess, or have within his or her immediate access any dangerous weapon or firearm while in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas.

(2) *Weapons on city buses.* It shall be unlawful for any person to willfully and intentionally carry, possess, or have within his or her immediate access any dangerous weapon while riding a city bus.

(3) *Carrying a concealed handgun by permit (CCHP).* In accordance with N.C.G.S. § 14-415.23, the prohibition set forth in subsection (a)(1) shall apply to CCHP in all buildings and on their appurtenant premises that are owned, leased as lessee, or otherwise temporarily controlled by the city which are appropriately posted as such in compliance with N.C.G.S. § 14-415.11(c).

(4) *Posting against CCHP.* In the discretion of the city manager, a posting to prohibit CCHP is hereby authorized to be made in all buildings and their appurtenant premises that are owned, leased as lessee, or otherwise temporarily controlled by the city in compliance with N.C.G.S. § 14-415.11(c).

(5) *Prohibiting CCHP at recreational facilities.* In accordance with N.C.G.S. § 14-415.23, the prohibition set forth in subsection (a)(1) shall apply to CCHP at any recreational facility identified in appendix G. The list of facilities in appendix G shall be reviewed regularly by the city manager and updated as necessary

(b) *Definitions.* For purposes of this section, the following terms shall be defined as set forth below:

Dangerous weapon: Any object, substance, or device, other than a firearm, designed or intended to be used to incapacitate or inflict serious injury upon persons or property, including any object defined as a deadly weapon by N.C.G.S § 14-269 and also including, but not limited to:

- Pellet guns or any other mechanism or device designed or used to project a missile by compressed air or mechanical action with less than deadly force;
- Bows and arrows, including crossbows or any other device designed to discharge a projectile through any combination of limbs, strings, cables, pulleys, or cams.
- Knives of any kind or type having a blade in excess of 3½ inches in length;

- Clubs, blackjacks, batons and nightsticks;
- Dynamite, bombs, grenades, mines or any other explosive, corrosive, inflammable, or radioactive substance of any kind;
- Slingshots and blowguns or any other device designed or used to project a missile through mechanical or physical means;
- Electronic weapons of any type including tasers, stun guns, or any other device designed or used to emit current, impulse, wave, beam, sound, vibration, or any form of energy in such a way so as to incapacitate, injure, or affect the behavior of another;
- Chemical weapons of any type including mace, pepper spray, or any other device designed or used to emit any substance in such a way so as to incapacitate, injure, or control the behavior of another.

Firearm: A handgun, shotgun, or rifle which expels a projectile by action of an explosion

Carrying a concealed handgun by permit (CCHP): The lawful carry of a handgun in a concealed manner in complete accordance with the requirements of N.C.G.S. Chapter 14 Article 54B by a person holding a valid concealed handgun permit issued pursuant to the same Article of law, or such permit issued by another state which is in reciprocity with North Carolina.

(c) *Applicability.* This section shall not apply to any circumstance or instance of dangerous weapon or firearm possession that has been preempted from local government regulation by N.C.G.S. 14-409.40 or 14-415.23. Additionally, this section shall not apply to the following circumstances or persons while acting lawfully and within the scope of their duties and authority:

(1) Officers of the United States federal government, the State of North Carolina, or of any county, city, town, or company police agency charged with the execution of the laws of the state, when acting in the discharge of their official duties.

(2) Sworn law-enforcement officers, when off-duty, provided that an officer carries the weapon concealed and does not carry a weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.

(3) Officers and enlisted personnel of the Armed Forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons.

(4) Officers and soldiers of the militia and the National Guard when called into actual service.

(5) Persons specifically authorized or required by state or federal law to carry firearms in the performance of their jobs.

(6) Nothing in this section shall prohibit a person from possession a knife with a blade in excess of 3½ inches when used solely for preparation of food, instruction or maintenance; or razors and razor blades when used solely for personal shaving.

(7) Nothing in this section shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on the grounds or parking areas of a public-owned building, public park, or recreation area.

(8) Any other person authorized, in writing, by the city manager or his designee to carry or possess dangerous weapons while in or upon specified public property. The city manager may promulgate guidelines for the issuance of permits for the possession of dangerous weapons on public property. The purpose of the guidelines shall be to ensure that permits are issued only for lawful purposes and in circumstances which present no threat to the safety and welfare of any person.

(9) This section shall not prohibit the lawful possession or carrying of dangerous weapons on the public streets and sidewalks.

(d) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4 or other applicable law.

Sec. 12-51. No camping on city property.

(a) Except pursuant to a permit issued pursuant to article IV of chapter 16 of the City Code, the use of city property for camping purposes, whether on a regular or intermittent basis, is prohibited. This prohibition is applicable regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

(b) This article shall not be enforced as to facilities designated for use for temporary housing or other accommodations in an emergency, as declared by the city or other governmental agency or official authorized by law to make such declaration.

(c) Other ordinances regulating the use of city property, including section 11-16 prohibiting sleeping on city property, are not repealed or superseded by this article.

(d) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 12-52. No tents or shelters on city property.

(a) Except pursuant to a permit issued pursuant to article IV of chapter 16 of the City Code, no tent or shelter of a temporary or permanent nature shall be placed or permitted to remain on city property.

(b) Umbrellas or unenclosed tents of a "pop-up" nature may be used in city parks subject to compliance with applicable provisions of the N.C. State Building Code, or park rules or regulations.

(c) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 12-53. No storage on city property.

(a) Except pursuant to a permit issued pursuant to article IV of chapter 16 of the City Code, it is prohibited to leave or allow to remain unattended any equipment, packages, bags, or other personal belongings on city property, and any such item is subject to removal by the city. This prohibition does not apply to bicycles, carts, strollers, or other means of personal transportation, secured in such a way as to not obstruct a street or sidewalk, or to interfere with the use of city property. This article shall not apply to offices or other non-public areas assigned to or under the control of city employees or agents.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

~~Sec. 13-3. Disposition of stolen property.~~¶

~~(a) Any property, the possession of which is taken by the police force or any member thereof from any person who has stolen such property, shall be disposed of in the manner provided in this section. Such property shall be taken to police headquarters and there safely kept for 60 days. Every reasonable effort shall be made to ascertain the ownership thereof. If at the end of such 60 days no person appears and claims such property or establishes title thereto, the chief of police shall advertise the property for sale by posting notices of such sale, fully describing the property, in three public places in the city and by publication in a daily newspaper~~

published in the city once a week for two successive weeks, such notice to specify when and where such sale will take place. ¶

(b) At the time and place provided for in the notice, such property shall be sold to the highest bidder for cash, and the chief of police shall keep or cause to be kept a complete record showing when such property came into the possession of the police force or any member thereof, where found or from whom taken, a description of the property, by whom claimed, if by anyone, when advertised, and when, where, to whom and for what amount sold. The chief shall turn over all the proceeds of such sales to the finance director, taking a receipt for such proceeds, and the finance director shall deposit such proceeds in the reward fund and it shall be disposed of in the same manner as moneys received for rewards, as provided for by state law. ¶

(Code 1965, § 21-6)¶

Sec. 13-4. Hospital report upon receipt of certain patients.¶

It shall be the duty of every person operating or maintaining a hospital within the city or any person in charge of such hospital to report to the police department, within 30 minutes after receiving at such hospital, any patient suffering from injuries sustained in an accident or by assault or from self-inflicted wounds, giving in such report: ¶

(1) The name of the patient; ¶

(2) His approximate age, sex and residence; ¶

(3) The extent of injuries, as near as ascertainable; ¶

(4) The person bringing such patient to the hospital; ¶

(5) The name of the attending physician; and ¶

(6) Any information which may be obtained as to the facts surrounding the injury to the patient. ¶

(Code 1965, § 21-7)¶

Sec. 13-5. Report of deaths resulting from accidental or violent means to police and medical examiner.¶

(a) *Hospitals.* It shall be the duty of the superintendent of every hospital or the person actively in charge thereof to report to the medical examiner and the police department, within 15 minutes thereafter, the death of any person within such hospital resulting from accidental or violent means. ¶

(b) *Physicians.* It shall be the duty of every practicing physician attending a case within the city, where death occurs as a result of accidental or violent means, to report the fact of such death to the medical examiner and the police department within 15 minutes after information of such death is received by such physician. ¶

(c) *Undertakers.* It shall be the duty of every person operating an undertaking establishment, by whatever name called, to report to the medical examiner and the police department, within 15 minutes after information of such death is received by such undertaking establishment, where death was occasioned by accidental or violent means. ¶

(Code 1965, § 21-8)¶

State law reference(s)—Physician's determination of death, G.S. 90-323; notification of death, G.S. 130A-112; postmortem investigation and disposition, G.S. 130A-377 et seq. ¶

Sec. 16-2. Obstruction of streets, sidewalks by persons prohibited.

(a) It shall be unlawful for any person, singly or in a group, to:

(1) Obstruct or cause to be obstructed vehicular or pedestrian traffic on the streets or sidewalks or in parks or other public areas within the corporate limits of the city; or

(2) Obstruct or cause to be obstructed corners, stairways or doorways to prevent or hamper free access by members of the public to private buildings fronting streets, sidewalks, parks or other public areas or to public buildings within such corporate limits.

(c) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 16-5. Use of streets, sidewalks and gutters as drains.

(a) No person shall use a street, sidewalk or gutter of the city as a drain to carry off any noxious fluid of any description whatsoever.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 16-97. Community events and festivals.

(a) Notwithstanding the provisions of this chapter to the contrary, the city manager is hereby authorized to permit certain types of community events or festivals to take place upon the public streets, sidewalks, squares, avenues or alleys of the city.

(b) The sponsor of the event or festival shall submit to the city manager a written application for a permit at least seven days prior to the opening of the community event or festival for which a permit is desired. The application shall state:

(1) The time, date and location of the festival or event;

(2) The group, firm or individual by whom the event will be sponsored;

(3) The purpose of the festival or event; and

(4) The activities that will be included.

(c) In granting permits for community events and festivals, the city manager shall consider the following:

(1) The nature of the event or festival and how it can serve the community of the city and its citizens;

(2) The time period during which the event or festival will occur;

(3) The location of the event or festival and whether the location inhibits the safe flow of traffic in the city;

(4) Whether the activities would be in compliance with other applicable laws;

(5) Whether the event or festival is to benefit nonprofit community service organizations. Commercial events or festivals which generate profit for the private sector, other than profit incidental to the festival or event which is made by persons other than the sponsor of the festival or event, shall be permitted only if the applicant submits evidence to the city manager that the event or festival constitutes a community service; and

(6) The general health, safety and welfare of the participants in the event or festival and the citizens of the city.

(d) The annual Bele Chere festival shall be automatically permitted. Nothing in this Code regulating signs, refuse containers or parking lot fees shall apply during the annual Bele Chere festival. ¶

(de) The sponsor of the event or festival shall provide all cleaning services necessary to rid the festival area of all debris and litter created as a result of the event or festival.

(ef) The issuance of a permit to a sponsor shall authorize only that sponsor and participants specifically authorized by the sponsor to participate in that community event or festival without the restrictions imposed by this chapter.

(g) Notwithstanding any provisions contained in section 9-26 et seq., authorized participants in a community event or festival for which a permit has been issued shall not be required to obtain a city privilege license for the period during which the community event or festival takes place. ¶

Sec. 16-114. Prohibition.

(a) It shall be unlawful for any person to conduct or otherwise participate in any parade that convenes before sunrise or terminates after sunset.

(b) It shall be unlawful for any person to engage in picketing focused on and taking place in front of a particular residence.

(c) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 16-115. Parades.

(a) *General responsibility of participants and persons in charge.*

(a) (1) Participants in a parade are required to abide by this division and the terms of the parade permit. Willful violation thereof is unlawful. Violation of this provision shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

(2) The person designated in the application as responsible for the conduct of the parade shall be responsible for monitoring the conduct of the participants in the parade. Upon actual notice of any violation given to the responsible person by a law enforcement officer on the scene of said parade, such responsible person shall make immediate attempts to correct the violation. It shall be unlawful for such responsible person to refuse to make attempts to correct the violation.

(3) The person(s) designated in the application as the person(s) responsible for the conduct of the parade shall be physically present and accept responsibility for compliance with any an all terms of the parade permit as set forth in this division.

(d) (b) *Interference.* No person shall unreasonable obstruct, impede or interfere with any parade or with any person, vehicle, or animal participating or used in a parade. Violation of this provision shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

(c) *Permit.* No person shall engage in, participate in, aid, form or start any parade unless a permit shall have been obtained from the chief of police. Violation of this provision shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

(d) *Exception to permit requirement.* This article shall not apply to the following:

(1) Funeral processions;

(2) Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of the proper school authorities;

(3) A governmental agency acting within the scope of its functions;

(4) A public demonstration in a traditional public forum; and

(5) permits are not required for assemblies on public property including but not limited to parks, sidewalks or Court Plaza, Pack Square or Pritchard Park, subject to compliance with applicable city ordinances concerning public sidewalks, unless it is known or reasonably probable that the assembly may necessitate the use or temporary closure of the streets, in which case a permit is required. If an assembly begins off the street but attracts an unexpected number of participants such that the assembly begins to occupy a portion of the street, the Asheville Police Department shall accommodate the assembly by closing a segment, lane, or portion of the street where so doing will not jeopardize the participants or unreasonably inhibit the flow of traffic on a major traffic route; however, the Asheville Police Department is authorized to limit the available portion of the street, where a segment, lane or portion of the street is capable of accommodating the assembly.

(e) *Permit and escort fees.* The city shall charge an administrative fee as set forth in the city's fees and charges manual to cover expenses incidental to processing the application and to cover expenses for logistical support, including barricades, police escorts, and parking restrictions, when said support is requested, or in the judgment of the city, needed for the safety of the parade, whether or not such request or determination is made in advance of the event. The fees shall be waived in whole or in part as necessary to ensure that constitutional rights of the applicants are not infringed, as follows:

(1) The city shall waive a permit fee, in whole or in part, for indigent individuals or groups as necessary to ensure that the constitutional rights of indigent applicants are not infringed. In cases where an indigency waiver is requested, the police chief shall consider, but not be limited to, the following: whether the applicant is employed; the financial resources available to the applicant; whether the applicant receives federal, state or local financial assistance; whether the applicant owns real property, and whether alternative arrangements are available. The police chief may base his determination of indigency on the identity of the real party in interest.

(2) Even if the applicant is not determined to be indigent, the city shall waive a permit fee, in whole or in part, if the applicant demonstrates that a waiver of fees is necessary to avoid an infringement of constitutional rights. The applicant shall provide a statement supporting this assertion and shall identify the issue for which the parade is being organized.

(3) Furthermore, if it is later determined that there has been an intentional, material misrepresentation of the applicant's financial status or other information provided on the application, the city reserves the right to charge the organizers an appropriate fee based on actual events.

(f) *Application.*

(1) A person seeking issuance of a parade permit shall file a completed application with the chief of police on a form provided by the chief of police. The form shall include a place for the applicant to indicate if the applicant is indigent and desires a waiver of permit fees. A copy of the city's schedule of fees from its fees and charges manual shall be furnished to the applicant form.

(2) An application for a parade permit shall be filed with the chief of police not less that five days before the time when it is proposed to conduct the parade, unless the applicant can show that the parade pertains to a current or emergent public issue. If the applicant makes this assertion in the application, the chief of police shall permit such an application to be filed within five days of the parade. Additional,

a permit may be issued if filed less than five days before the time for commencement of the parade when the chief of police finds that:

a. There is no conflict in schedule with some other previously scheduled event; and

b. That the time for filing is sufficient to prepare for the parade pursuant to the standards set forth in this subsection.

(g) The applicant for a parade permit shall set forth the following information:

(1) The name, address and telephone number of the person seeking to conduct such parade.

(2) If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization and of the person who will be responsible for the conduct of the parade.

(3) The date when the parade is to be conducted and the hours when such parade will start and terminate.

(4) The proposed route to be traveled, the starting point, and the termination point.

(5) The approximate number of persons who, and animals and vehicles which, will constitute such parade; the type of animals and description of the vehicles.

(6) The location by streets and designation by time of an assembly area of such parade.

(7) If the parade is designed to be held by, and on behalf of, or for any person other than the applicant, the applicant for such permit shall file with the chief of police a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit in his behalf.

(8) The person or person to be in charge of the parade for all purposes and who will accompany it and carry the permit at all times.

(9) Any additional information which the chief of police nay need to clarify any of the specific information set forth above.

(h) *Issuance standards.* The chief of police shall issue a parade permit upon submission of the completed application, unless he finds one or more of the following conditions present:

(1) Adequate provision cannot be made for the safe and orderly movement of the parade and of other traffic, pedestrian and vehicular, contiguous to its route.

(2) Adequate provisions cannot be made for police protection without requiring the diversion of so great a number of police officers of the city to police properly the lines of movement and the areas contiguous thereto, thereby preventing normal police protection to the city.

(3) The applicant for the parade permit has not agreed to abide by the standards set forth in this division which are necessary measures to promote the safety and welfare of the community.

Additionally, the following standards are applicable to the chief of police's decision to issue a parade permit:

(4) All costs for staging the parade, including fees and charges assessed by the city, shall be itemized and provided to the applicant with the permit.

(5) Such determinations may not be based on the estimated number of non-participant observers.

(6) Such determinations may not be based on the content of speech expected to be expressed during the parade.

(i) *Notice of rejection.* The chief of police shall act upon the application for a parade permit within 48 hours after the filing thereof. If the applicant has filed an application for a parade permit under the "current or emergent public issue exception" set forth in subsection (f)(2), the chief of police shall make every effort to act on the

application within 24 hours and in any event not later than 24 hours before the event. If the chief of police disapproves the application he shall notify the applicant, stating the reasons for his denial of the permit.

(j) *Alternative permit.* The chief of police, in denying an application for a parade permit shall be empowered to authorize the parade on a date, at a time, or over a route different from that named by the applicant. An application desiring to accept an alternative permit shall, within one day after notice of the action of the chief of police, file a written notice of acceptance with the chief of police. An alternate parade permit shall conform to the requirements of, and shall have the effect of a parade permit under this division.

(k) *Right to appeal.* Any person denied a parade permit or who rejects an alternative permit, or who objects to any of the costs to be assessed by the city, shall have the right to an immediate appeal to the city manager. The hearing of a parade permit appeal shall be prioritized so as to allow the city manager the opportunity to review the appeal and render a decision prior to the requested date and time of the parade. Any applicant desiring to file an appeal shall, within 24 hours, excluding weekends and holidays after notice of the action of the chief of police, enter either a written or oral notice of appeal with the chief of police. The chief of police shall be responsible for forwarding the notice of appeal, along with all documents related to the appeal, to the city manager and arranging for the appeal hearing to take place within a reasonable period of time prior to the date of the proposed parade.

(l) *Post event appeal.* In the event an appeal based on costs cannot be resolved prior to the event, or if the applicant believes that the logistical support deployed for the event is not justified based on actual experience, or that a request for a fee waiver was wrongfully denied, that appeal may be made to the city manager within 48 hours after the event has occurred, and the city manager shall determine said appeal within the times prescribed above.

(m) *Parking on parade route.* The chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street or highway or part thereof, constituting a part of the route of the parade. When necessary, the chief of police shall see that signs are posted to such effect at least 12 hours prior to the parade, and it shall be unlawful for any person to park, remain parked or leave unattended any vehicle in violation thereof. No person, however, shall be liable for parking on a street unposted in violation of this section.

Sec. 16-116. Picketing.

(a) *General requirements.*

(1) Peaceful picketing shall be allowed in the city provided the same is done in accordance with the following regulations:

a. Picketing shall be conducted only on sidewalks or other city-owned areas normally used or reserved for pedestrian movement, including casements and rights-of-way, and shall not be conducted on a portion of any street used primarily for vehicular traffic.

b. Picketers shall observe the right of non-picketers to utilize the public rights-of-way for passage on foot and shall at all times keep the public rights-of-way free and clear for utilization by other pedestrian movement

c. Picketers shall walk in single file and not abreast.

d. Picketers are encouraged to provide notice to the chief of police of intent to picket.

(b) *Interruption of passage.*

(1) Whenever the free passage of any street or other public area in the city shall be obstructed by picketers, persons picketing shall disperse or move along when directed to do so by a police officer of the city.

(2) Whenever the free passage of any street or other public area in the city shall be obstructed by a crowd, the persons composing such crowd shall disperse or move along when directed to do so by a police officer of the city.

(3) Nothing in this section shall prohibit any person from reconvening after dispersing so long as free passage of any street or other public area is not obstructed.

(c) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 16-117. Weapons.

(a) With the exception of law enforcement officers acting within the scope of their duties, no firearms or dangerous weapons of any kind, as defined by federal, state and local laws, may be possessed by any participant in a parade or by any person engaged in picketing.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4 in addition to any other applicable charges.

Sec. 16-142. Scope.

(a) Except as a permit may be issued pursuant to this article V for locations within the Central Business District, the Biltmore Village Historic District, or other zoning districts where office and business uses are a permitted use, it shall be unlawful for any person to sell, offer for sale, exhibit or demonstrate any goods, wares, merchandise, mechanical devices, animals or any article of any kind whatsoever, by whatever name called, upon any public street, sidewalk, square, avenue or alley within the corporate limits of the city.

(b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 16-145. Performers of sidewalk entertainment.

(a) Artistic performances on city sidewalks are a vital and welcome part of Asheville's unique character and culture.

(b) Street performances are distinguished from panhandling activities by the commercial nature of the performer's actions which provide the benefit of a live performance of artistic value in exchange for gratuities given in appreciation of the performance.

(c) Persons have a right to perform on city sidewalks, but those performances can cause adverse impacts to the community in the form of gathering crowds attracted to the entertainment offered in locations where there is insufficient room for crowds; blocked sidewalks; blocked ingress and egress of buildings; the risk of disrupting nearby motor vehicle traffic; and/or disturbance of the quiet enjoyment of residents and businesses.

(d) Such adverse impacts can be mitigated or alleviated through minimally intrusive regulation of the time, place, and/or manner in which such performances may occur. Such regulation ensures the ability of street performers to perform in public spaces and promotes harmony among street performers, local businesses,

permitted event sponsors, and residents and visitors by balancing the interests of performing artists with the public's safety.

(e) General requirements. Unless prohibited elsewhere in this code, performers of sidewalk entertainment may utilize sidewalks for performances subject to the following conditions:

(1) Performances must not violate the prohibitions on disturbing, annoying and unnecessary noise as set forth in article IV of chapter 10 of the city Code.

(2) Performances must not violate the prohibitions on solicitation as set forth in city Code sections 11-5 and 11-14.

(3) Performances must not obstruct, or cause to be obstructed, pedestrian or vehicular traffic, including but not limited to, not obstructing or causing to be obstructed sidewalks, doorways or other access areas. Performances must provide a minimum of six feet for pedestrian passageway. Performances must cease if persons are stopped and observing a performance from a street.

(4) No performer may sell, display or exhibit any tangible good, on any sidewalk, in exchange for a fixed price or donation.

(5) Performances must only take place between the hours of 10:00 a.m. and 10:00 p.m.

(6) Performers of sidewalk entertainment must not consume, or be under the influence of, alcoholic beverages or other controlled substances.

(7) The following limitations on sidewalk space used for performances must be observed at all times:

a. *Generally:* Performances must not take place any closer than 40 feet from another performance.

b. *Within high impact areas:* Only one audible performance may take place on a sidewalk at any single time within 120 feet of a location marked on the sidewalk and identified in Appendix H of the city Code. Non-audible performances within such areas must not take place any closer than 40 feet from another performance.

(8) Performances must not take place at locations designated for a community event or festival, unless permitted to play at the community event or festival by the event or festival coordinator, pursuant to section 16-97 of the city Code.

(9) Performances must comply with all applicable federal, state and local laws.

(10) Performances involving the use of knives, swords, torches, axes, saws (except non-powered saws used solely as musical instruments), fire or other potentially dangerous objects or that involve acrobatics, tumbling, or other inherently dangerous activities are prohibited.

(f) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-4. Riding on handlebars, frame or tank of bicycle or motorcycle.

(a) The operator of a motorcycle or bicycle, when upon a street, shall not carry any other person upon the handlebars, frame or tank of any such vehicle nor shall any person so ride upon any such vehicle.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-5. Clinging to moving vehicles.

(a) No person riding upon any bicycle, motorcycle, coaster, sled, roller skates or any toy vehicle shall attach himself or his vehicle to any moving vehicle upon any roadway.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-6. Use of skateboards, roller skates, coasters or toy vehicles on roadways.

(a) No person upon a skateboard, roller skates or riding in or by means of any coaster, toy vehicle or similar device shall go upon any roadway, except while crossing a street on a crosswalk and except upon streets set aside as play streets when and as authorized by this chapter.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-7. Use of skateboards, roller skates or coasters on sidewalks.

(a) No person shall engage in roller coasting, skate- boarding or roller skating on any sidewalk in a business district.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-8. Quiet zones.

(a) All of the territory within 200 feet of the premises of each hospital in this city is hereby created and established as a zone of quiet. The traffic engineer is hereby authorized to erect and maintain, within this area, such signs and markings as are necessary to designate it as a zone of quiet.

(b) The traffic engineer may temporarily establish a zone of quiet upon any street where a person is seriously ill, if requested to do so by the written statement of at least one registered physician certifying to its necessity. Such temporary zone of quiet shall embrace all territory within a radius of 200 feet of the building occupied by the person named in the request of the physician. Such temporary zones of quiet shall be designated by the traffic engineer by placing, at a conspicuous place in the street, a sign or marker bearing the words "quiet zone."

(c) No person operating a motor vehicle within any designated and signed zone of quiet shall sound the horn or other warning device of such vehicle, except in an emergency, nor shall any person make any loud or unusual noise or play any music within or upon any of the streets, alleys or public places in any such zone of quiet. Violation of this provision shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-13. Accident reports.

(a) The driver of a vehicle involved in a collision resulting in injury to or death of any person or total property damage to an apparent extent of $500.00 or more shall immediately, by the quickest means of communication, give notice of the collision to the police department, if the collision occurs within the city.

(b) Notwithstanding any other provision of this section, the driver of any motor vehicle which collides with another motor vehicle left parked or unattended on any street or highway in the city shall immediately report the collision to the owner of such parked or unattended motor vehicle. Such report shall include the time, date and place of the collision and the driver's name, address, operator's or chauffeur's license number and

the registration number of the vehicle being operated by the driver at the time of the collision. Such report may be oral or in writing. If the driver is, for any reason, unable to make the report required by this subsection, such driver shall make and file a report of the collision in the same manner and subject to the same requirements as in the case of a collision as provided in subsection (a) of this section. Any report made pursuant to this subsection shall be competent in any civil action for the sole purpose of establishing the identity of the person operating the moving vehicle at the time of colliding with the parked or unattended vehicle.

(c) The police department may require the driver of a vehicle involved in a collision which is required to be reported by this section to file a supplemental report when the original report is insufficient, in the opinion of the department, and the department may require witnesses of a collision to render reports.

(d) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-36. Driving on right side of highway; exceptions.

(a) Upon all streets and highways of sufficient width, a vehicle shall be driven upon the right half of the highway except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway, provided any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) Upon a highway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a highway designated and signposted for one-way traffic.

(b) Upon all streets and highways any vehicle proceeding at less than the legal maximum speed limit shall be driven in the righthand lane then available for through traffic or as close as practicable to the righthand curb or edge of the highway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn.

(c) Upon any street or highway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the highway, except when authorized by official traffic control devices designating certain lanes to the left side of the center of the highway for use by traffic not otherwise permitted to use such lanes or except as permitted under subsection (a)(2) of this section.

(d) Whenever any street has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent with this section shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a street which is divided into three or more lanes and provides for the two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance or in the preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by an official traffic control device.

(3) Official traffic control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction, regardless of the center of the street, and drivers of vehicles shall obey the direction of every such device.

(4) Official traffic control devices may be installed prohibiting the changing of lanes on sections of streets, and drivers of vehicles shall obey the directions of every such device.

(e) Notwithstanding any other provision of this section, when appropriate signs have been posted, it shall be unlawful for any person to operate a motor vehicle over and upon the inside lane, next to the median of any dual-lane highway at a speed less than the posted speed limit when the operation of the motor vehicle over and upon the inside lane shall impede the steady flow of traffic, except when preparing for a left turn. The term "appropriate signs," as used in this section, shall be construed as including "slower traffic keep right" or designations of similar import.

(f) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-37. Passing vehicles proceeding in opposite direction.

(a) Drivers of vehicles proceeding in opposite directions shall pass each other to the right and, upon roadways having width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the main traveled portion of the roadway, as nearly as possible.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-38. Overtaking vehicle.

(a) The driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle. This subsection shall not apply when the overtaking and passing is done pursuant to the provisions of section 19-40.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

(c) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-39. Limitations on overtaking and passing.

(a) The driver of a vehicle shall not drive to the left side of the center of a highway, in overtaking and passing another vehicle proceeding in the same direction, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety.

(b) The driver of a vehicle shall not overtake and pass another vehicle proceeding in the same direction upon the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed within a distance of 500 feet.

(c) The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any railway grade crossing nor at any intersection of highway unless permitted to do so by a traffic or police officer. For the purposes of this section the words "intersection of highway" shall be defined and limited to intersections designated and marked by the state department of transportation by appropriate signs and street intersections.

(d) The driver of a vehicle shall not drive to the left side of the centerline of a highway upon the crest of a grade or upon a curve in the highway where such centerline has been placed upon such highway by the state department of transportation and is visible.

(e) The driver of a vehicle shall not overtake and pass another on any portion of the highway which is marked by signs, markers or markings placed by the state department of transportation stating or clearly indicating that passing should not be attempted.

(f) The limitations of this section shall not apply upon a one-way street nor to the driver of a vehicle turning left in or from an alley, private road or driveway.

(g) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-40. Overtaking and passing on right.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is in a lane designated for left turns.

(2) Upon a street or highway with unobstructed pavement of sufficient width which has been marked for two or more lanes of moving vehicles in each direction and such lanes are not occupied by parked vehicles.

(3) Upon a one-way street or upon a highway on which traffic is restricted to one direction of movement when such street or highway is free from obstructions and is of sufficient width and is marked for two or more lanes of moving vehicles which are not occupied by parked vehicles.

(4) When driving in a lane designating a right turn on a red traffic signal light.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-41. Duty of driver of overtaken vehicle.

(a) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on suitable and audible signal being given by the driver of the overtaking vehicle. The driver of the overtaken vehicle shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-42. Turning at intersections.

(a) *Right turns.* Both the approach for a right turn and a right turn shall be made as close as practicable to the righthand curb or edge of the roadway.

(b) *Left turns.* The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme lefthand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(c) *Modifications.* The city traffic engineer may modify the method of turning at intersections by clearly indicating by buttons, markers or other direction signs within an intersection the course to be followed by vehicles turning thereat, and it shall be unlawful for any driver to fail to turn in a manner as so directed.

(d) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-43. Prohibited turns.

(a) The traffic engineer is hereby authorized to determine those intersections at which drivers of vehicles shall not make a right turn, left turn or U-turn and shall place proper signs at such intersections. No driver of a vehicle shall turn the vehicle contrary to any such sign.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-44. Right-of-way—Generally.

(a) Except as otherwise provided in this chapter, when two vehicles approach or enter an intersection at approximately the same time and traffic at such intersection is not controlled by a traffic control signal or sign, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(b) The driver of a vehicle approaching but not having entered an intersection shall yield the right-of-way to a vehicle already within such intersection, whether the vehicle in the intersection is proceeding straight ahead or turning in either direction. This subsection shall not be interpreted as giving the right-of-way to a vehicle already in an intersection when such vehicle is turning either to the right or left, unless the driver has given a plainly visible signal of intention to turn as required in section 19-47.

(c) The driver of any vehicle approaching but not having entered a traffic circle shall yield the right-of-way to a vehicle already within such traffic circle.

(d) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-45. Same—Left turns.

(a) The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but such driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn and the drivers of all other vehicles approaching the intersection from the opposite direction shall yield the right-of-way to the vehicle making the left turn.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-46. Yield right-of-way intersections.

(a) The traffic engineer is hereby authorized to designate main-traveled or through streets by erecting at the entrance thereto from intersecting streets signs notifying drivers of vehicles to yield the right-of-way to drivers of vehicles approaching the intersection on the main-traveled or through street. Notwithstanding any other provisions of this chapter, whenever any such yield right-of-way signs have been so erected, it shall be unlawful for the driver of any vehicle to enter or cross such main-traveled or through street unless he shall first slow down and yield the right-of-way to any vehicle in movement on the main-traveled or through street which is approaching so as to arrive at the intersection at approximately the same time as the vehicle entering the main-traveled or through street. No failure to so yield the

right-of-way shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to yield the right-of-way may be considered with the other facts in the case in determining whether either party in such action was guilty of negligence or contributory negligence.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-47. Signals on starting, stopping or turning.

(a) The driver of any vehicle upon a highway or public vehicular area before starting, stopping or turning from a direct line shall first see that such movement can be made in safety and if any pedestrian may be affected by such movement shall give a clearly audible signal by sounding the horn and whenever the operation of any other vehicle may be affected by such movement shall give a signal as required in this section, plainly visible to the driver of such other vehicle, of the intention to make such movement. The driver of a vehicle shall not back the vehicle unless such movement can be made with safety and without interfering with other traffic.

(b) The signal required in subsection (a) of this section shall be given by means of the hand and arm in the manner specified as follows or by any mechanical or electrical signal device approved by the traffic engineer, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by the traffic engineer:

(1) Whenever the signal is given the driver shall indicate his intention to start, stop or turn by extending the hand and arm from and beyond the left side of the vehicle as follows:

a. Left turn: hand and arm horizontal, forefinger pointing.

b. Right turn: hand and arm pointed upward.

c. Stop: hand and arm pointed downward.

(2) All hand and arm signals shall be given from the left side of the vehicle and all signals shall be maintained or given continuously for the last 100 feet traveled prior to stopping or making a turn. In all areas where the speed limit is 45 miles per hour or higher and the operator intends to turn from a direct line of travel, a signal of intention to turn from a direct line of travel shall be given continuously during the last 200 feet traveled before turning.

(3) Any motor vehicle in use on a highway shall be equipped with and the required signal shall be given by a signal lamp or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles, except combinations operated by farmers in hauling farm products.

(c) No person shall operate a righthand-drive motor vehicle or a motor vehicle equipped with the steering mechanism on the righthand side thereof unless the motor vehicle is equipped with mechanical or electrical signal devices by which the signals for left turns and right turns may be given. Such mechanical or electrical devices shall be approved by the traffic engineer.

(d) A violation of this section shall not constitute negligence per se.

(e) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-48. One-way streets and alleys—Designation and marking.

The traffic engineer is hereby authorized to designate streets and alleys or portions thereof whereon vehicular traffic shall be restricted to one direction only. Whenever such a designation is made, signs shall be

erected and maintained at every intersection or entrance to such street or alley where movement in the opposite direction is prohibited, which signs shall indicate the direction of lawful traffic movement.

Sec. 19-49. Same—Driving in wrong direction.

(a) Whenever signs are in place in accord with section 19-48 indicating a one-way street or alley, it shall be unlawful for any person to drive a vehicle in any but the direction indicated for lawful traffic movement.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-50. Obstructing intersections or crosswalks.

(a) No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk and on the right half of the roadway to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-51. Obstruction of driver's view or driving mechanism.

(a) No person shall drive a vehicle when it is so loaded or when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides or to interfere with his control over the driving mechanism of the vehicle.

(c) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-52. Procedure upon approach of authorized emergency vehicle.

(a) Upon the approach of an authorized emergency vehicle giving audible signal by bell, siren or exhaust whistle, the driver of every other vehicle shall immediately drive the vehicle to a position as near as possible and parallel to the righthand edge or curb of the street, clear of any intersection, and shall stop and remain in such position, unless otherwise directed by a police or traffic officer, until the emergency vehicle has passed.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-53. Following fire apparatus or driving near scene of fire.

(a) The driver of any vehicle, other than one on official business, shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive into the block where fire apparatus has stopped in answer to a fire alarm.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-54. Driving over fire hose.

(a) It shall be unlawful to drive a motor vehicle over a fire hose or any other equipment that is being used at a fire at any time or to block a firefighting apparatus or any other equipment from its source of supply regardless of its distance from the fire.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-55. Limitations on turning around.

(a) The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street in a business district and shall not, upon any other street, so turn a vehicle unless such movement can be made in safety and without interfering with other traffic.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-56. Limitations on backing.

(a) The driver of a vehicle shall not back the vehicle into an intersection or over a crosswalk or otherwise back the vehicle unless such movement can be made in safety.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-57. Driving through safety zone or on sidewalks.

(a) The driver of a vehicle shall not at any time drive through or over a safety zone.

(b) No person shall drive any motor vehicle upon a sidewalk or sidewalk area except upon a permanent or temporary driveway.

(c) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-58. Driving on play streets.

(a) The traffic engineer may declare any street or part thereof a play street and place appropriate signs in the roadway indicating the play street. When so declared and indicated, no person shall drive a vehicle upon any such street or portion thereof, except drivers of vehicles having business or whose residences are within such closed area and then any such driver shall exercise the greatest care in driving upon any such street or portion thereof.

(b) On those days when conditions are suitable for coasting on snow or ice, no person shall drive a vehicle upon any street or parts of streets when signs are erected giving notice thereof. This subsection shall not prevent the use of any streets by drivers of vehicles having business or whose residences are within such reserved areas, but any such driver shall exercise the greatest care in driving upon any such street or portion thereof at any such time.

(c) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-59. Parking oversize vehicles on streets.

(a) It shall be unlawful to park a vehicle as described in subsection (b) of this section on any city system streets within the city.

(b) A vehicle to which this section shall be applicable shall be a truck, tractor, trailer, semitrailer or bus which has a gross weight in excess of 10,000 pounds or which has a length in excess of 270 inches overall or a width in excess of 96 inches.

(c) The city manager or his designee is hereby authorized to permit temporary parking of vehicles as described in subsection (b) of this section on city system streets as he may deem appropriate in connection with construction-related activities.

(d) This section shall not be applicable to the following vehicles:

(1) A vehicle in the process of being loaded, unloaded or in the performance of service to or for property located on or adjacent to the public street.

(2) A vehicle temporarily rendered inoperable by mechanical difficulty for such time necessary to effect necessary repairs, but in no event to exceed three hours.

(e) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-61. Trucks on designated streets.

(a) *Prohibition.* all trucks within the city shall be prohibited from traveling upon designated streets as enumerated in the city's traffic schedule printed herein as Appendix C. Further, such trucks shall be subject to the same provisions of section 19-60 herein.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-82. Obedience to devices.

(a) It shall be unlawful for the driver of any vehicle or any pedestrian to disobey the instructions of any official traffic control device or signal placed in accordance with the provisions of this chapter, unless otherwise directed by a police officer then on duty.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-84. Vehicle control signs and signals.

(a) *Authority.* The city traffic engineer, with reference to highways and streets under his jurisdiction, is hereby authorized to control vehicles at:

(1) Intersections, by erecting or installing stop signs requiring vehicles to come to a complete stop at the entrance to that portion of the intersection designated as the main traveled or through highway. Stop signs may also be erected at three or more entrances to an intersection.

(2) Appropriate places other than intersections, by erecting or installing stop signs requiring vehicles to come to a complete stop.

(3) Intersections and other appropriate places, by erecting or installing steady-beam stoplights and other traffic control devices, signs or signals. All steady-beam stoplights emitting alternate red and green

lights shall be arranged so that the red light shall appear at the top of the signaling unit and the green light shall appear at the bottom of the signaling unit.

(4) Intersections and other appropriate places, by erecting or installing flashing red or yellow lights.

(b) *Control of vehicles at intersections.*

(1) When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. When stop signs have been erected at three or more entrances to an intersection, the driver, after stopping in obedience thereto, may proceed with caution.

(2) Vehicles facing a red light controlling traffic passing straight through an intersection from a steady or strobe beam stoplight shall not enter the intersection while the steady or strobe beam stoplight is emitting a red light controlling traffic passing straight through an intersection. Except where prohibited by an appropriate sign, vehicular traffic facing a red light controlling traffic passing straight through an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a right turn, but such vehicle shall yield the right-of-way to pedestrians and to other traffic using the intersection. When the stoplight is emitting a steady yellow circular light on a traffic signal controlling traffic passing straight through an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the related green light is being terminated or a red light will be immediately forthcoming. When the stoplight is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject to the rules applicable to making a stop at a stop sign.

(4) When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, yielding the right-of-way to vehicles in or approaching the intersection.

(5) When a stop sign, stoplight, flashing light or other traffic control device authorized by subsection (a) of this section requires a vehicle to stop at an intersection, the driver shall stop at an appropriately marked stop line or, if none, before entering a marked crosswalk or, if none, before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street.

(c) *Control of vehicles at places other than intersections.*

(1) When a stop sign has been erected or installed at a place other than an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to pedestrians and other vehicles.

(2) When a stoplight has been erected or installed at a place other than an intersection and is emitting a steady red light, vehicles facing the red light shall come to a complete stop. When the stoplight is emitting a steady yellow light, vehicles facing the light shall be warned that a red light will be immediately forthcoming and that vehicles may not proceed through such a red light. When the stoplight is emitting a steady green light, vehicles may proceed subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.

(3) When a flashing red light has been erected or installed at a place other than an intersection, approaching vehicles facing the light shall stop and yield the right-of-way to pedestrians or other vehicles.

(4) When a flashing yellow light has been erected or installed at a place other than an intersection, approaching vehicles facing the light may proceed with caution, yielding the right-of-way to pedestrians and other vehicles.

(5) When a stoplight, stop sign or other signaling device authorized by subsection (a) of this section requires a vehicle to stop at a place other than an intersection, the driver shall stop at an appropriately marked stop line or, if none, before entering a marked crosswalk or, if none, before proceeding past the signaling device.

(d) *Failure to stop.* No failure to stop as required by this section shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether a party was guilty of negligence or contributory negligence.

(e) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-85. Pedestrians subject to signals.

(a) The city traffic engineer, with reference to highways and streets under his jurisdiction, is hereby authorized to erect or install, at intersections or other appropriate places, special pedestrian control signals exhibiting the words or symbols "walk" or "don't walk" as a part of a system of traffic control signals or devices.

(b) Whenever special pedestrian control signals are in place, such signals shall indicate as follows:

(1) *Walk.* Pedestrians facing such signal may proceed across the highway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) *Don't walk.* No pedestrian shall start to cross the highway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the don't walk signal is showing.

(c) Where a system of traffic control signals or devices does not include special pedestrian control signals, pedestrians shall be subject to the vehicular traffic control signals or devices as they apply to pedestrian traffic.

(e) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-86. Unauthorized devices.

(a) It shall be unlawful for any person to place or maintain or to display upon or in view of any street, highway or roadway any sign, signal or device which:

(1) Purports to be or is in imitation of or resembles an official traffic control sign or signal;

(2) Attempts to direct the movement of traffic; or

(3) Hides from view or interferes with the effectiveness of any officially placed sign, signal or device.

(b) Any device in violation of this section is hereby declared to be a public nuisance and the chief of police is hereby ordered to remove the device or cause the device to be removed.

(c) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-87. Defacing or removing devices.

(a) It shall be unlawful for any person to deface, injure, knock down or remove posted, painted or erected signs, signals or devices provided by this chapter.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-111. Reasonable speed; speed limit in business and residential districts.

(a) No person shall drive a vehicle on a street or highway in the city at a speed greater than is reasonable and prudent under the conditions then existing. Except as otherwise provided in this article, it shall be unlawful to operate a vehicle in excess of 20 miles per hour in any business district or in excess of 35 miles per hour in any residential district.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-136. Unattended motor vehicles.

(a) No person driving or in charge of a motor vehicle shall permit it to stand unattended on a public street or highway or public vehicular area without first stopping the engine, effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-137. Parking prohibitions at certain locations.

(a) It shall be unlawful for the driver of a vehicle to stop, stand or park such vehicle in any of the following places, except when necessary to avoid conflict with other traffic or with the direction of a police officer or traffic signal:

(1) Within an intersection;

(2) On a crosswalk;

(3) Between a safety zone and the adjacent curb, or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless otherwise indicated by signs or marks;

(4) Within 25 feet of the driveway or entrance to any fire station;

(5) Within 15 feet of any fire hydrant;

(6) In front of any private driveway;

(7) In a designated bicycle lane that is identified with pavement markings and/or signs.

(8) On any sidewalk;

(9) On any curb;

(10) On any median strip;

(11) On any landscaped or planted area within the right-of-way of any street, highway or roadway;

(12) Alongside of or opposite any street excavation or obstruction, when such stopping or parking shall obstruct traffic;

(13) On the roadway side of any vehicle stopped or parked at the edge of a street, highway or roadway, except in such instances as double parking may be allowed by the regulations of this chapter;

(14) At any place where official traffic signs have been erected prohibiting standing or parking.

(b) No person shall park a vehicle or permit it to stand, whether attended or unattended, upon any public vehicular area, street, highway or roadway in any area designated as a fire lane. This subsection includes designated fire lanes in shopping center or mall parking lots and all other public vehicular areas. However, persons loading or unloading supplies or merchandise may park temporarily in a fire lane located in a shopping center or mall parking lot as long as the vehicle is not left unattended. The prima facie rule of evidence created by G.S. 20-162.1 is applicable to prosecutions for violation of this section. The owner of a vehicle parked in violation of this subsection shall be deemed to have appointed any state, county or municipal law enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle. No law enforcement officer removing such a vehicle shall be held criminally or civilly liable in any way for any acts or omissions arising out of or caused by carrying out or enforcing any provisions of this subsection, unless the conduct of the officer amounts to wanton misconduct or intentional wrongdoing.

(c) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-138. Passenger zones, loading zones and tow-away zones.

(a) The city manager shall have the authority from time to time to determine, designate and locate passenger zones, loading zones and tow-away zones on the highways, streets and roadways within the city, and he shall direct and maintain or cause to be maintained appropriate signs indicating the zones.

(b) It shall be unlawful for the driver of any vehicle to stop, stand or park such vehicle for any period of time longer than is necessary for the expeditious loading or unloading of passengers or freight in any place marked as a passenger zone, and it shall also be unlawful for the driver of any vehicle to stop, stand or park such vehicle for a period of time longer than is necessary for the expeditious loading or unloading of passengers or material in any place marked as a loading zone. In no case shall a stop for loading and unloading of materials exceed the space of 30 minutes, unless specially permitted by a permit issued by the traffic engineer.

(c) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-139. Bus stops and taxicab stands.

(a) The traffic engineer is hereby authorized to require and establish bus stops on such public streets, highways and roadways in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public. The traffic engineer is further authorized to establish taxicab stands in accord with section 18-37. Every such bus stop and taxicab stand shall be designated by appropriate sign.

(b) It shall be unlawful for the driver of any vehicle, other than a bus, to stand or park in an officially designated bus stop or for any vehicle, other than a taxicab, to stand or park in an officially designated taxicab stand.

(c) It shall be unlawful for the driver of any bus or taxicab to stand or park upon any highway, street or roadway in the business district in any place other than at an officially designated bus stop or taxicab stand, except that this shall not prevent the driver of any such vehicle from temporarily stopping, in accordance with other stopping or parking regulations, at any place for the purpose of and while actually engaged in loading or unloading passengers.

(d) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-140. Clearance for other traffic.

(a) It shall be unlawful for the driver of any vehicle to stop, stand or park such vehicle upon any street, highway, roadway or alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic, except that a driver may stop temporarily for the purpose of actually loading or unloading passengers or when necessary in obedience to traffic regulations or a traffic signal or upon direction of a traffic officer.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-141. Stop intersections.

(a) The traffic engineer is hereby authorized to erect stop signs at the entrances of intersections designated by him, which signs shall be located so as to indicate which vehicles approaching the intersection are required to stop. The driver of a vehicle approaching such a sign shall stop at the entrance to the intersection and shall yield the right-of-way to other vehicles which have entered the intersection or which are approaching so closely as to constitute an immediate hazard, but such driver, having so yielded, may proceed and the drivers of all other vehicles approaching the intersection shall yield the right-of-way to the vehicle so proceeding into or across the intersection.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-142. Stop required when emerging from alley, private road, driveway or building.

(a) The driver of a vehicle emerging from an alley, private road, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area and, upon entering the roadway, shall yield the right-of-way to all vehicles approaching on the roadway.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-143. Designation and marking or areas where parking is prohibited, limited, restricted or allowed.

(a) The traffic engineer is hereby authorized to designate streets and alleys or portions thereof where the parking of vehicles shall be prohibited, limited or restricted and to erect signs or markings indicating such prohibition, limitation or restriction. It shall be unlawful for any person to park a vehicle in violation of any such sign or marking, and each hour that any such violation continues shall constitute a separate offense.

(b) The traffic engineer is hereby authorized to designate streets and alleys or portions thereof where the parking of vehicles shall be allowed and to erect signs or paint lines or otherwise designate where parking is allowed and restrictions thereon.

(c) It shall be unlawful for any person to park a vehicle along or on a street or alley in the Central Business District zoning district, or its successor zoning district, as designated in the city's zoning ordinance and on the city's zoning maps, unless a sign, line or other marking designates that parking is allowed on streets or alleys in that district.

(d) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-144. Method of parking.

(a) Except when necessary in obedience to traffic regulation or traffic signal or the direction of a traffic officer, it shall be unlawful for the driver of a vehicle to park such vehicle in a highway, street or roadway other than parallel with the edge of the roadway, street or highway, headed in the direction of traffic, and with the curbside wheels of the vehicle within 12 inches of the edge of the road or curb, except that:

(1) Upon such streets, highways or roadways as may have been marked or signed for angle parking including reverse angle parking; vehicles shall be parked at the angle of the curb indicated by such marks or signs.

(2) In places where and at hours when stopping for loading or unloading of merchandise or material is permitted, vehicles used for the transportation of merchandise or material may back to the curb for the purpose of discharging or taking on loads to remain for a period of not more than 30 minutes, except as provided in section 19-145.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-146. Parking near scene of fire.

(a) It shall be unlawful for any person, other than one on official business, to park any vehicle within a block where fire apparatus has stopped in answer to a fire alarm.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-147. Lights on parked vehicles.

(a) Whenever a vehicle is lawfully parked on a street during the time between one-half hour after sunset and one-half hour before sunrise and there is sufficient light to reveal any person within a distance of 200 feet upon such street, no lights need be displayed upon such parked vehicle. When, during such times or at any other time, there is not sufficient light upon a street to reveal a person at a distance of 200 feet, a parked vehicle shall be equipped with and shall exhibit lights in accord with G.S. 20-134.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-168. Deposit of slugs.

(a) It shall be unlawful for any person to deposit or cause to be deposited in any parking meter any slug, device or substitute in place of a United States coin.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-169. Defacing or injuring meter.

(a) No unauthorized person shall deface, injure, tamper with, open or willfully break, destroy or impair the usefulness of any parking meter installed under the provisions of this division.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-186. Overtime or illegal parking; towing; violations.

(a) It shall be unlawful for any person to cause, allow, permit or suffer any vehicle which he is operating or over which he has any control to be parked overtime or in any space designated for parking in a city parking lot on a monthly basis to an individual or group of individuals upon any city parking lot or to be parked in a city parking lot beyond the period of authorized parking time, applicable to the parking space in which such vehicle is parked. Each hour that any such violation continues shall constitute a separate offense.

(b) In addition to the other provisions of this division, in all cases in which a vehicle is parked on any city parking lot in violation of this division, such vehicle may be towed away from such city parking lot and stored in such place as may be designated by the police. If it becomes necessary to have such vehicle towed away and stored, the charges for towing and storage shall be paid by the owner or other person responsible for such vehicle.

(a) (c) It shall be unlawful for any person to deposit or cause to be deposited in any parking meter or parking control device located on any city parking lot any slug, device or metal substance or other substitute for lawful money of the United States. Violation of this provision shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

(c) (d) It shall be unlawful for any person to willfully and unlawfully deface, injure, tamper with, open or willfully break, destroy or impair the usefulness of any parking meter or parking control device located on any city parking lot, buffer or any other property, installation or appliance installed and maintained at any city parking lot in connection with the operation thereof. Violation of this provision shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-201. Use of city parking garages.

(a) City parking garages are for the exclusive use of those persons who park their vehicles there, along with passengers of such vehicles. It shall be unlawful for any person to be present in a city parking garage unless the person is:

(1) In a vehicle which is in a parking space or on its way to or from a parking space;

(2) Walking to or from a parked vehicle, having entered or returning to the garage as a driver or a passenger of the vehicle; or

(3) An employee or agent of the city whose presence in the garage is required in connection with his duties.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-228. Right-of-way at crosswalks.

(a) Where traffic control signals are not in place or in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this article.

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(c) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-229. Duty to use crosswalk.

(a) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-230. Use of right half of crosswalks.

(a) Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(b) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

Sec. 19-231. Crossings at other than crosswalks.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Violation of this section shall be an infraction and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

~~Sec. 19-232. Soliciting rides.¶~~

~~No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any private vehicle. ¶~~

~~(Code 1965, § 28-141)¶~~

~~State law reference(s)—Similar provisions, G.S. 20-175. ¶~~

~~Sec. 19-234. Citations for certain violations.¶~~

~~It shall be the duty of police officers to issue a citation to any pedestrian violating section 19-82, 19-226, 19-229 or 19-230. ¶~~

~~(Code 1965, § 28-143)¶~~

~~Sec. 19-286. Giving away or drinking liquor at stations.¶~~

~~Any person who shall engage in drinking or giving away intoxicating liquors in the waiting rooms, wash or baggage rooms, closets, booths or upon the platform of any railroad station in the city shall be guilty of a misdemeanor. ¶~~

~~(Code 1965, § 23-11)¶~~

State law reference(s)—Sale of beer and wine on trains, G.S. 18B-108; unlawful possession and consumption of alcoholic beverages, G.S. 18B-102(a), 18B-301. ¶