

CHAPTER 8, SUBDIVISION REGULATIONS

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Sec. 9-3001. General provisions.

(a) *Title.* This chapter shall be known as the Subdivision Code of the City of Morganton, or the “Subdivision Code.”

(b) *Authority.* This chapter is adopted under the authority and provisions of Chapter 160A, Article 19, Part 2 of the General Statutes of North Carolina.

(c) *Jurisdiction.* These regulations, and the requirements of this chapter, shall apply to and govern all subdivisions of land within the territorial jurisdiction of the city as now or hereafter established.

(d) *Purpose.* The purpose of this chapter is to establish procedures and standards for the development and subdivision of real property within the corporate limits and extraterritorial jurisdiction of the city in an effort to, among other things:

(1) Promote orderly growth and development consistent with the goals, objectives and policies of the Land Development Plan.

(2) Provide for suitable residential and nonresidential subdivisions with adequate streets and utilities and appropriate building sites.

(3) Provide for the distribution of population and traffic in a manner which shall avoid congestion and overcrowding.

(4) Provide for the coordination of streets within subdivisions with existing or planned streets and with other public facilities

(5) Provide for the dedication or reservation of rights-of-way or easements for street and utility purposes.

(6) Provide for the dedication or reservation of adequate spaces for public lands and buildings.

(7) Protect and enhance environmental quality.

(8) Provide for the dedication or provision of facilities for adequate storm drainage.

(9) Provide proper land records for the convenience of the public and for better identification and permanent location of real property boundaries.

(e) *Subdivision defined.* For purposes of this chapter, *subdivision* shall mean all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development, whether immediate or future, including land leases with an effective term of three or more years and shall include all divisions of land involving the dedication of a new street or a change in existing streets, but shall not include the following:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this chapter;

(2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for the widening or opening of streets.

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this chapter; or

(5) The division of land into burial plots where no street right-of-way dedication is involved.

(1) *Compliance.*

(1) From and after the adoption of this chapter, no real property lying within the jurisdiction of this chapter shall be subdivided except in compliance with all applicable provisions of this chapter. In addition, after the effective date of this chapter, no plat for the subdivision land within the jurisdiction of this chapter shall be filed, accepted for recording or recorded, nor shall the Register of Deeds for Burke County, North Carolina, order the recording of a plat until it has been submitted and approved in the accordance with the provisions of this chapter.

(2) The plat or other documents relating to the division of any lands which is not regulated by this chapter or otherwise excluded from the definition of a subdivision under subdivision (e) above, shall have the notation “No Approval Required” stamped or written thereon and the signature of the Subdivision Administrator attached thereto before being presented for filing in the office of the Register of Deeds.

(2) *Subdivision Administrator.* This chapter shall be administered by the Subdivision Administrator who shall be appointed by the City Manager. The Subdivision Administrator shall administer and enforce the provisions of this chapter and have such other specific powers and duties as are set forth in this chapter. The Subdivision Administrator may designate other agents and employees to act on his behalf.

(3) *Coordination of plans.* All plans, plats and supporting documents required to be submitted under the procedures and regulations set forth in this chapter shall first be submitted to the Subdivision Administrator for review or other appropriate action. The Subdivision Administrator shall develop and maintain a written set of standards (“mapping standards”) to serve as the basis for the type, size, graphic media, number of copies, information to be shown and other similar matters in regards to the maps and documents required to be submitted in the administration of this chapter. Such standards may also include other written city standards for street, storm drainage and utility construction plans as established by the city from time to time.

(4) *Fees.* An application or processing fee as established by the City Council and set forth in the schedule of fees and charges in effect in the city shall be paid by each subdivider, developer or other person submitting a subdivision for approval hereunder. The Subdivision Administrator shall be responsible for collecting such fees. All fees shall be due and payable upon the submission of the preliminary plan or if there is no preliminary plan upon the submission of the sketch plan or final plat as the Subdivision Administrator may determine.

(5) *Definitions and construction.*

(1) Unless specifically defined in this section, words used in this chapter shall have their respective customary dictionary definitions. For purposes of this chapter, certain words, terms and phrases used herein are interpreted and defined as follows:

Dedication. A gift, by the owner, of a right to use of land for a specified purpose or purposes. Because a transfer or property rights is entailed, dedication must be made by written instrument, and is completed with an acceptance.

Easement. A grant of one or more of the property rights by the property owner of a portion of land for a specific purpose and use by the public, a corporation or other entities.

Final plat. The map or plan or record of a subdivision and any accompanying material, as described in these regulations, intended to show the layout of the subdivision and all required improvements as finally approved and constructed. The final plat becomes the record plat when recorded in the office of the Register of Deeds for Burke County.

Lot. A separate and distinct unit of land described by either a metes and bounds description and/or subdivision plat of record and/or probated will. Lot includes a portion of a subdivision or any other parcel of land, intended as a unit for transfer of ownership or for development or both.

Planning and Zoning Commission. The Planning and Zoning Commission of the City of Morganton, North Carolina.

Preliminary Plan. The preliminary drawing or drawings, described in these regulations, indicating the proposed manner or layout of the subdivision to be submitted to the Subdivision Administrator for review and any action required under this chapter.

Public Works Director. The Director of Public Works of the City of Morganton, North Carolina.

Reserve strip. A strip of land (usually only a few feet wide) owned privately, and set aside around a subdivision in order to prevent access to adjacent property by way of subdivision streets.

Required drainage channel. The theoretical stream bed section which is required to discharge the runoff from a 100-year storm.

Sketch plan. A sketch preparatory to the preparation of the preliminary plan to enable the subdivider to save time and expense in reaching general agreement with the Subdivision Administrator as to the form of the plat and the objectives of these regulations.

Storm, ten-year. The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

Storm, 25-year. The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

Storm, 100-year. The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 100 years and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

Subdivider. A person engaging in the act of subdividing property.

Subdivision. See division (e).

Street. A public right-of-way for vehicular travel which has been constructed and then dedicated to and accepted by the city or the North Carolina Department of Transportation for public use or which has been otherwise obtained by such agencies for such use or which is proposed to be constructed and then dedicated to and accepted by such agencies as a public right-of-way for vehicular traffic for public use pursuant to this chapter. Street classifications are as follows:

- (2) *Arterial street.* A federal and/or state highway designed primarily for the movement of large volumes of vehicular traffic from one area to another; a thoroughfare.
- (1) *Collector street.* A public way designed primarily to connect residential streets with arterial streets and/or to provide direct connection between two or more arterial streets and which may be designed to carry significant volumes of vehicular traffic having neither origin nor destination on the street.
- (2) *Minor street.* A public way used primarily for providing direct access to abutting properties.

Minor streets are further classified as:

Residential. Those streets whose primary function is to provide direct access to residential property.

Commercial-industrial. Those streets whose primary function is to provide direct access to commercial-industrial property.

Cul-de-sac. A short minor street having one end open to traffic and the other end permanently terminated with a vehicular turnaround.

- (3) *Street, half.* A proposed vehicular travelway intended to be developed by constructing one-half of a required width of a street with the remainder to be provided at some future date.
- (4) *Street, private.* A vehicular travelway not dedicated as a public street.

Territorial jurisdiction. The city limits of the city as now or may be hereafter established and the extra-territorial area of the city as now or may hereafter be established.

Thoroughfare plan. The thoroughfare plan as adopted by the City Council of the city and as may from time to time be amended.

(2) The following rules shall apply when interpreting or construing this chapter:

- (a) Words used in the *present tense* shall include the *future tense*.
- (b) Words used in the *singular* shall include the *plural* and words used in the *plural* shall include the *singular*.
- (c) The words *shall* and *will* always indicate *mandatory*.
- (d) The words *should* and *may* always indicate *optional*.
- (e) The word *lot* includes the words *plot* and/or *parcel*.
- (f) The word *building* includes the word *structure*.
- (g) The word *person* includes a firm, association, organization, partnership, trust, company, corporation, and/or individual or any other entity.
- (h) The word *use* includes the terms arranged, designed and/or intended for a use, activity and/or purpose.
- (i) The term *City Council* shall always indicate the City Council of the City of Morganton.
- (j) The term *Director of Engineering* shall always indicate the Director of Engineering of the City of Morganton.
- (k) The term *City Manager* shall always indicate the City Manager of the City of Morganton.
- (l) The term *Subdivision Administrator* shall always indicate the Subdivision Administrator of the City of Morganton or any other person authorized to administer or help administer this chapter.

(Ord.91-49, 12-2-91)

Sec. 9-3002. Subdivision review procedure.

Any person subdividing a tract of land or submitting a subdivision for approval under this chapter shall comply with the subdivision review procedures established under this section.

- (a) *Approval levels.* The subdivision review procedure shall consist of three levels of required approval:

- Sketch Plan;
- Preliminary Plan (including required construction plans); and
- Final Plat

Normally, sketch plan approval shall be a prerequisite to preliminary plan approval and preliminary plan approval shall be a prerequisite to the final plan or plat approval; provided, however, the Subdivision Administrator may waive the requirement of a sketch plan.

- (b) *Subdivision types.* The subdivision review procedure shall consist of two types of subdivisions: major subdivisions and minor subdivisions. Major subdivisions are those subdivisions which involve the dedication of new street segments (but not simply widening), those subdivisions where special developments are involved as permitted by the Zoning Code, and those subdivisions that involve other public purposes. All other subdivisions shall be considered to

be minor subdivisions. Subdivisions which would otherwise be minor subdivisions except for the open space/recreation dedication required by 9-3003(i) may be treated as minor subdivision if the subdivider elects to make a payment in lieu of dedication as provided for in that section.

(c) *Approval authority.* Preliminary plans for major subdivisions shall be subject to approval or other appropriate action by the City Council but only after review and recommendation by the Planning and Zoning Commission. Sketch plans for major and minor subdivisions, preliminary plans for minor subdivisions, and the final plats for major and minor subdivisions shall be subject to Subdivision Administrator review, approval or other appropriate action.

(d) *Plan and plat requirements.* Plans and plats, supporting documents or other material for the levels of subdivision approval required hereunder shall be submitted in the form required by the mapping standards established by the Subdivision Administrator. Though not required, the Subdivision Administrator may hold a pre-submittal conference with the subdivider or other person submitting a subdivision for approval in order to determine the subdivision approval track and supporting document requirements for that particular subdivision.

(e) *Plan and plat submittal and review periods.* Plans and plats, in proper form, shall be submitted to the Subdivision Administrator for review and consideration of approval or submission to the Planning and Zoning Commission, according to the schedule set forth in this subsection. Plans, plats or supporting documents which do not meet the standards required herein or mapping standards established by the Subdivision Administrator may be refused.

- (1) Sketch plans may be submitted at any time. The Subdivision Administrator shall either approve, approve conditionally or deny the approval of the sketch plan within 30 days of receipt. The action taken by the Subdivision Administrator shall be stated in writing and may be stamped or otherwise noted on the plan, dated and signed.
- (2) Preliminary plans and minor subdivisions may be submitted at any time. The Subdivision Administrator shall either approve, approve conditionally or deny the approval of the preliminary plans within 30 days of receipt. The action taken by the Subdivision Administrator shall be stated in writing and may be stamped or otherwise noted on the plans, dated and signed.
- (3) Preliminary plans for major subdivisions may be submitted at any time; provided, however, in order to be eligible to be placed on a agenda of a Planning and Zoning Commission meeting, such plans shall be filed with the Zoning Administrator at least 21 days prior to that meeting. The Planning and Zoning Commission shall recommend approval, approval with conditions, or denial of the preliminary plan within 45 days of its first consideration. Such recommendations shall be stated in writing and may be stamped or noted on the plans, dated and signed by the Chairman or other officer of the Planning and Zoning Commission.

Upon receipt of the Planning and Zoning Commission's recommendation, the Subdivision Administrator shall place the preliminary plans on the next available City Council agenda for review and consideration by the City Council. The City Council shall then approve, approve conditionally, deny the approval of the preliminary plat or take other appropriate action. Reasons of approval or the reason for denial of the approval shall be entered on the minutes of the City Council.

- (4) Final plats may be submitted at any time. The Subdivision Administrator shall either approve, approve conditionally or deny the approval of the final plats within 30 days of the filing thereof. The action taken by the Subdivision Administrator shall be stated in writing and may be stamped or noted on the plat, dated and signed.

(f) *Appeals.* An aggrieved person may appeal any decision of the Subdivision Administrator to the Planning and Zoning Commission and may appeal any decision of the Planning and Zoning Commission to the City Council by filing written notice with the Subdivision Administrator within 30 days of the Subdivision Administrator or Planning and Zoning Commission action, or, their failure to act, if either failed to act within the allotted time. The Planning and Zoning Commission or City Council, as the case may be, acting on appeal, shall have the same authority as the approval authority from which the appeal is made in regard to the subject level of subdivision review and approval.

(g) *Effect of Approval- prerequisites.*

- (1) Sketch plan approval shall entitle the subdivider to prepare for submittal of the preliminary plan. The Subdivision Administrator may refuse to accept a preliminary plan based upon a sketch plan approval that was granted more than six months prior to the preliminary plan submittal.
- (3) Preliminary plan approval shall constitute tentative approval of the final plat if the final plat is in substantive agreement with the preliminary plat and shall entitle the subdivider to proceed to prepare street, storm drainage and utility construction plans, if applicable, and/or to proceed to prepare the final plat, as the subdivider may be directed by the Subdivision Administrator. The Director of Engineering shall review and approve, if appropriate, all construction plans. After approval of construction plans, the subdivider may proceed with construction of subdivision improvements for the preliminary plan and no construction including grading, shall proceed without such approval. In addition, the Subdivision Administrator may require, as a prerequisite to preliminary plan approval, the submittal for review and approval of all or part of subdivision construction plans in order to ascertain the feasibility of all or part of a proposed subdivision. If a final plat of all or part of the area shown on a preliminary plan is not recorded in the office of the Register of Deeds within 18 months of approval of the preliminary plan, or if there is a lapse of more than 18 months between the recording of sections, the Subdivision Administrator may require the resubmittal of the unrecorded portion as a sketch plan or preliminary plan as he may determine for additional review and approval.
- (4) Final plat approval shall entitle the subdivider to record the final plat. A final plat must be recorded in the office of the Register of Deeds within 30 days of its approval by the Subdivision Administrator. No final plat shall be regarded as finally approved until such plat has been properly recorded.

No final plat shall be approved for recording until all required subdivision improvements have been installed and approved or until the subdivider provides an appropriate guarantee of installation as required in 9-3005. In addition, no final plat shall be approved for recording unless such plat is in substantial agreement with the approved preliminary plan. Final plats not in substantial agreement shall be resubmitted as preliminary plans as provided for herein.

After the final plat is recorded, lots shown on the plat may be sold or otherwise conveyed by reference to the plat and building permits and/or certificate of occupancy may be issued.

Approval and recording of the final plat shall constitute dedication by the subdivider of the right-of-way of each public street and utility and drainage easement shown on such plat. Such dedication, however, does not constitute acceptance by the city of such right-of-way, nor does it constitute acceptance for maintenance or for other purposes of the improvements within such rights-of-way and easements such as pavements, sidewalk, drainage facilities, and other utility lines. Such right-of-way and improvements may be accepted by the City Council by resolution upon completion by the subdivider and inspection by the appropriate city staff. In addition, land designated on an approved and recorded final plat as public open space and similar public purposes shall be considered to be offered for dedication until the city has been accepted, land so offered may be used for open space purposes by its owner or his designees and the city shall be held harmless of any liability involving such land. Land so offered for dedication shall not be used for any purpose inconsistent with the purposed public use without the express approval of the City Council.

(Ord. 91-49, 12-2-91)

Sec. 9-3003. Subdivision design standards; reservations and dedications.

(a) *General.*

- (1) All purposed subdivisions subject to regulation under this chapter shall comply with this section and shall be so planned as to facilitate the most advantageous development of the entire community as well as bear a sensible relationship to the land development plan of the city. Wherever a tract to be subdivided or developed includes or adjoins any part of a thoroughfare or collector street, as designated by the thoroughfare plan, that part of such proposed public right-of-way shall be dedicated as public right-of-way on the subdivision plat in the location and to the width recommended by the plan or this section.
- (2) The general design of the subdivision shall take advantage of and be adjusted to the contour of the land so as to produce usable building sites and streets of reasonable gradients.

(b) *Names.*

- (1) The name of a proposed subdivision shall not duplicate or be phonetically similar to an existing subdivision name within the jurisdiction unless the proposed subdivision lies adjacent to or is in close proximity to the existing subdivision.
 - (2) Proposed streets which are obviously in alignment with others already existing or proposed and named shall bear the names of the existing or proposed streets. In no case shall the names of proposed streets duplicate or be phonetically similar to other existing street names in the jurisdiction irrespective of the addition of a prefix, suffix, or word such as street, avenue, place, drive or court.
- (c) *Streets.* The proposed street system shall extend existing and projected streets at not less than the required minimum width and shall comply with the following criteria:
- (1) Conformance with thoroughfare plan. The location and design of streets shall be in conformance with the thoroughfare plan. Where conditions warrant, right-of-way width and pavement width in excess of the minimum street standards may be required. In any case where any part of a subdivision lies within the corridor of a thoroughfare shown on a roadway corridor official map adopted pursuant to North Carolina General Statutes Chapter 136, Article 2D, no subdivision approval shall be granted with respect to the property in the roadway corridor; provided, however, no subdivision plat approval shall be delayed by the provision of the roadway corridor official map procedure for more than three years from the date of its original submittal.
 - (2) Street classification. The final determination of the classification of streets in a proposed subdivision shall be made by the City Council. All streets shall be planned, designed and dedicated as public streets.
 - (3) Conformance with adjoining street system. The planned street layout of a proposed subdivision shall be compatible with existing or proposed streets and their classifications on adjoining or nearby tracts.
 - (4) Access to adjoining property. Where in the opinion of the City Council it is desirable to provide for street access to adjoining property, proposed streets shall be extended to the boundary of such property.
 - (5) Reserve strips, half streets and private streets. Reserve strips adjoining street rights-of-way for the purpose of preventing access to or from adjacent property, (except those required to prevent access to major thoroughfares) and half-streets shall not be permitted under any condition. Private streets shall be permitted only in specific developments as permitted by the Zoning Code.
 - (6) Intersections. Streets shall be designed to intersect as nearly as possible at right angles, and no street shall intersect any other street at an angle of less than 60 degrees. Streets crossing natural areas or streams shall cross at or near to right angles as possible within limits of topographic condition. Intersections in alignment should be at least 400 feet apart from centerline to centerline. Offset or misaligned intersections shall be prohibited except where topographic features or other similar hardship prevent the alignment of the intersecting streets. Intersections which cannot be aligned shall be at least 200 feet apart from centerline to centerline.
 - (7) Cul-de-sac length. Permanent deadend streets shall not exceed 600 feet in length measured from the centerline of the intersection street to the center of the turn-around and shall be provided with a turn-around meeting city standards. A system of permanent dead-end streets or loop streets originating from a single point of intersection with no provisions for future extension shall not be allowed except where dictated by existing conditions.
 - (8) Marginal access streets. Where a tract of land to be subdivided adjoins a thoroughfare, the subdivider may be required to provide a marginal access street parallel to the thoroughfare or provide for through lots on a local street for the lots to be developed adjacent to the thoroughfare. Where through lots are established, such lots may be prevented from having direct access to the thoroughfare by driveways.
 - (9) Utilities, streetlights and storm drainage within streets. Utilities, street lights, sidewalks, storm drainage and other such facilities to be placed within the street right-of-way shall be placed in accordance with city standards for construction in public rights-of-way. All utilities shall be placed underground. Wire type utilities shall be placed in conduit.

- (10) Pavement, curb and gutter. Pavement, curb and gutter to be placed in public streets shall be placed in accordance with city standards for construction in public rights-of-way.
- (11) Street design criteria. All street designs and construction within public street rights-of-way shall be in accordance with city standards for the street design and construction in public rights-of-way.
- (12) Water and sewer design criteria. All water and sewer facilities extending or connecting to the city systems shall be designed and constructed in accordance with the standards of the city. All other public systems shall be approved for construction by the appropriate agency of the state.
- (d) *Lots.* The size, shape and orientation of lots shall be appropriate for the location of the proposed subdivision, for the type development contemplated, and in consideration of the method of providing water and sewer facilities to the lots. It is the intent of this chapter that lot size, shape and orientation shall be controlled by the provisions of the Zoning Code and the types of development permitted by that code. Every lot shall have sufficient area, dimensions and shape to permit a principal building to be constructed thereon in conformance with the applicable provisions of the Zoning Code. Such buildable area shall lie at or be elevated to at least two feet above the 100-year flood elevation as provided for in the Flood Damage Prevention Code. Lots shall be designed so as to provide positive drainage away from building sites and individual lots shall be coordinated with the general storm drainage plan for the subdivision. Storm drains carrying water from street rights-of-way shall be placed along lot lines where practical and shall extend for a minimum of 35 feet back of the building line. Lot boundaries shall be made to coincide with natural and pre-existing man-made drainage ways to the extent practical to avoid the creation of lots that can be built upon only by altering such drainageways. Lots shall be arranged with due consideration given to not disturbing wetlands, rock outcrops and other such natural features. Sidelines of lots should be at or near right angles or radial to street lines. All lots must have public street access and frontage meeting the requirements set forth in the Zoning Code. Parcels created through the subdivision process which are not intended for building purposes shall be so designated and perpetually bound as “not-buildable” unless subsequently released through the subdivision process.
- (e) *Storm drainage not in streets.* Storm drainage systems and facilities shall be designed in accordance with the requirements of 9-3004(b) of this chapter. Open drainage channel requirements shall be based upon a 100-year storm and enclosed systems shall be based upon a ten-year storm for collectors and upon a 25-year storm for street crossing conduits and immediately downstream of such crossings. The design of storm drainage systems and plans, including calculations, shall clearly indicate the easements and dedicated areas required for the construction and maintenance of the drainage system.
- (f) *Easements.* To provide for electric, telephone and gas service, community antenna television distribution systems, water and sewer lines and other such facilities within the subdivision, appropriate utility easements not to exceed 30 feet shall be provided on the final plat. The locations of such easements shall be determined by the Director of Engineering and based upon the approved construction plans. All utilities shall be placed underground. In addition, storm drainage easements may be required by the Director of Engineering in order to carry out the storm drainage improvements as required in 9-3004(b).
- (g) *Phasing.* Subdivision may be designated to be constructed and platted in phases; however, the Subdivision Administrator may not approve a phasing plan when such phasing will not provide for adequate public facilities to support any such phase or phases independent of the overall subdivision plan. In approving phases, the Subdivision Administrator may require that additional streets, water and sewer facilities or other required public facilities be constructed as part of the phase or phases in order to ensure that sufficient public facilities will be in place to support such phase or phases independent of any future subdivision development.
- (h) *School sites.* In any case where the Board of Education and City Council have jointly determined the specific locations and size of any school site to be reserved and the information appears in the approved comprehensive land use plan, the Subdivision Administrator shall immediately notify the Board of Education whenever a sketch plan for a subdivision is submitted which includes all or part of a school site to be reserved. The Board of Education shall promptly decide whether it still wishes the site to be reserved. If the Board of Education does not wish to reserve the site, it shall so notify the Subdivision Administrator. If the Board does wish to reserve the site, the preliminary approval shall not be granted without such reservations. The Board of Education shall then have eighteen months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by exercise of

the power of eminent domain. If the Board of Education has not purchased or begun proceedings to condemn the site within 18 months, the subdivision may treat the land as released of the reservations.

- (i) *Neighborhood recreation sites.* The subdivider of any subdivision for residential purposes shall dedicate to the city land for park, recreation and/or open space designed to serve the residents of the subdivision and residents of the immediate neighborhood of the subdivision. The amount of land to be dedicated shall be determined by the following formula:

$$(\text{Number of lots or dwelling units}) \times (\text{Average size of family}) \times (.008) = \text{acres to be dedicated.}$$

In applying the formula each factor shall be determined as follows:

- (1) The number of lots or dwelling units shall equal the number shown on the approved preliminary plan.
- (2) The average size of family shall be taken from the latest U.S. Census for the census tract in which the subdivision is located. If the subdivision is in more than one tract, the census data shall be averaged to determine if the subdivision is of applicable family size.
- (3) The factor “.008” is a standard of eight acres per 1,000 persons.

Where a subdivision is to be developed in phases, the full open space/recreation dedication shall be made in the first phase.

The land purposed for dedication shall be suitable for the intended purpose as determined by the City Council. Factors to be considered in evaluating suitability shall include but not be limited to the following:

Unity: The preferred land should be one parcel with a width not significantly greater than the depth.

Location: The preferred land should be centrally located relative to the subdivision and neighborhood and/or in conformance with the open space and parks master plan.

Accessibility: The preferred land should have easy, direct access to the public street system and be accessible by both vehicular and pedestrian traffic.

Usability: The preferred land should be usable for active recreation facilities and/or open space.

Notwithstanding the criteria above, the City Council may accept as suitable any land, which meets an entirely different set of criteria when in its opinion such land meets the purpose of this section in providing for the particular circumstances and needs of the subdivision and neighborhood.

At the option of the City Council in approving a preliminary plan, the City Council may require that the subdivider make a payment in-lieu of all or part of required land dedication whereby the city may acquire recreational land or areas to serve the subdivision or subdivisions in the immediate area. In any case where a subdivision would otherwise be a minor subdivision, the subdivider may at his option make a payment in-lieu of a dedication of land and continue as a minor subdivision. In any such case where funds are to be provided in lieu of a dedication, funds to be provided by the subdivider shall be computed by multiplying the equivalent acreage times the taxable value of the acreage being subdivided as recorded in the then current registry of the Burke County Tax Assessor’s office.

- (j) *Subdivision entrance markers and landscaped medians.* The City Council may permit subdivision entrance markers and landscaped medians within the public right-of-way subject to the following conditions and any additional conditions the City Council may find to be appropriate in the individual circumstance:

- (1) The City will not be responsible for maintenance
- (2) An entity responsible for maintenance shall be created.
- (3) No such improvements shall interfere with sight distance or with normal maintenance requirements or otherwise pose a hazard to vehicular or pedestrian traffic.
- (4) In the event of loss, damage or lack of maintenance, the city may remove all improvements and maintain the area in accordance with city standards.

(Ord. 91-49, 12-2-91)

Sec. 9-3004. Required improvements; warranty against defects.

In connection with an approved subdivision all improvements required by this section shall be installed or constructed to city standards. Required improvements shall be installed at no cost to the city except as may be otherwise provided for by written policies established by the City Council from time to time concerning utilities and other public works but only to the extent such policies provide for reimbursement or the sharing of such expenses. Required improvements under this section shall not be installed until construction plans have been approved by the Director of Engineering for the city and such other agency as may be appropriate or as required by law. As provided for in 9-3002(g)(3) the final plat may be recorded prior to the installation of any or all required improvements provided that a financial guaranty in a form acceptable to the city is provided by the subdivider as required under 9-3005(a).

(a) *Street improvements.* All proposed streets shall be graded to full width of the right-of-way and improved with a pavement width and standard curb and gutter section as required for the particular classification of street. All grading pavement and curb and gutter shall be designed and installed in accordance with city standards and the approved construction plan. In addition, street paving and curb and gutter, in accordance with the above condition, shall be installed in the following situations:

- (1) Any existing street segment that has not been accepted for maintenance by either the city or the North Carolina Department of Transportation, and that is to serve as the required frontage for one or more lots created pursuant to this chapter, shall be improved and dedicated to the public, as provided for above, in such a way that the street segment meets the standards of this chapter for the particular classification of street, including right-of-way width. Such street segment shall be directly connected to the existing public street system by way of at least one public street accepted for maintenance by either the city or the North Carolina Department of Transportation. No subdivision shall be permitted on any street that is an "island" not connected directly to the public street system.
- (2) Where a subdivision fronts on any existing street segment maintained by either the city or the North Carolina Department of Transportation and the street does not meet the minimum standards of this chapter for the classification of the street, the subdivider shall improve the portion of street adjoining the subdivision to meet the minimum standards including construction and width. When the subdivision adjoins only one side of an existing street, one-half of the minimum right-of-way shall be provided, measured from the centerline of the street.
- (3) The City Council may require pavement and widening or pavement and widening and curb and gutter for turning lanes along any existing or proposed street that forms a significant entrance to a proposed subdivision where in the opinion of the City Council such improvements are necessary in order to provide for safe vehicular movement into and out of the proposed subdivision.
- (4) Where a street is stubbed into adjoining property for future extension and such street serves as the frontage for one or more lots which are not corner lots, the City Council may require the pavement of a temporary turn-around in a form similar to a cul-de-sac on such street where in their opinion such turn-around is necessary for the public convenience, safety and service.

(b) *Storm drainage improvements.* All watercourses which would carry under existing conditions a flow of five cubic feet per second or more during a ten year storm shall be subject to the improvements and other requirements set forth in either subsection (1), (2), or (3) which are set forth below. Generally upon drainage channel requirements shall be based upon 100-year storm. Enclosed system requirements shall be based upon a ten-year storm for collectors and upon a 25-year storm for street crossing conduits and areas immediately downstream from such crossings. All storm drainage improvements shall be installed in accordance with either subdivisions (1), (2), or (3).

(1) Enclosed subsurface drains.

- (a) This subdivision establishes the requirements for enclosed subsurface drains. Profiles and conduit standards shall be in accordance with the standards of the city.
- (b) All utility easements shall be shown on the recorded plat. The required utility easement shall be centered on the enclosure when practical, but in no case shall the outside wall to the enclosure be located closer than five feet to the utility easement line. The utility easement shall be of a width determined necessary for maintenance purposes by the Director of Engineering based upon enclosure depth, topography and location of existing and proposed improvements, but no less than 20 feet.

- (c) Utility easements shall be kept free and clear of any buildings or other improvements which would interfere with the proper maintenance or replacement of the underground facilities. The city shall not be liable for damages to any improvement located within the utility easement area caused by maintenance of utilities located therein. Furthermore, utility easements may be used for future installations of any underground utility, provided that:
 - i. Any underground utility to be installed by any utility provider other than the city shall be subject to approval by the Director of Engineering.
 - ii. Any government agency or private company installing additional underground lines after development has been completed by the owner of the property shall be responsible for the replacement of all fencing, pavement and grassed area disturbed by such installation.
 - iii. The city shall not be responsible for damages caused by installation of additional lines by any private utility company.

(2) Open channel in dedicated drainage way and open space area.

- (a) This subsection establishes the requirements applicable to an open channel in a dedicated drainage way and open space area. Subdividers may use this option only in those instances in which the City Council indicates its willingness to accept the required dedication at the time of approval of the preliminary plan. The drainage way and open space area shall be dedicated by a recorded plat which shall have clearly noted thereon "Dedicated to the City of Morganton and the Public for Drainage way and Open Space." If a portion of the drainage way and open space lies within a proposed thoroughfare shown on the thoroughfare plan, it shall be clearly noted thereon "Dedicated to the City of Morganton and the Public for Drainage and Open Space or Thoroughfare."
- (b) The dedicated drainage way and open space area shall include the required drainage channel and the land between the channel and the natural 100-year flood contour as determined by the Director of Engineering. However, the area to be dedicated may be reduced to a minimum total average width of 200 feet by filling that area between the 100-year flood contour and the minimum width, provided that no slopes are created greater than three to one.
- (c) In case of severe topography, additional width may be required to assure reasonable ease of maintenance.
- (d) The dedicated drainage way and open space area shall abut public street right-of-way on at least 30% of its perimeter except when the City Council determines that adequate access is otherwise provided. The minimum length of street frontage at each location where drainage way and open space abuts public street right-of-way shall be 60 feet. The maximum distance, measured by straight lines on either side of the drainage way and open space, between points at which the drainage way and open space abuts street right-of-way shall be 1,000 feet.
- (e) Adjoining development shall be designed to provided for economical maintenance of the drainage channel and surrounding open area. The centerline of the required drainage channel shall be located no less than 50 feet from any street or property line provided that the dimensions of the drainage way and open space area conform to all other requirements of this section.
- (f) The dedicated flood plain and open space may be counted for all or part of the required neighborhood recreation dedication but only in such cases as are affirmatively indicated by the City Council in approving the preliminary plans.
- (g) The open area to be dedicated as flood plain and open space shall be left in its natural condition or graded to a section approved by the Director of Engineering which will allow economical and efficient maintenance and shall be stabilized with permanent vegetative cover. It shall be the responsibility of the subdivider, in presenting the open area for dedication, to ensure that the watercourse(s) contained therein are free from all debris, litter and other obstacles that would interfere with proper functioning of the watercourse.

(3) Open channel on private property within drainage maintenance and utility easement.

- (a) This subdivision establishes the requirement applicable to open channels on private property within a drainage maintenance and utility easement.
- (b) The drainage maintenance and utility easement shall include the required drainage channel and the land between the channel and the natural 100-year flood contour as determined by the Director of Engineering; or, in some cases, it may be reduced by modifying the drainage maintenance and

utility easement topography to a typical required drainage channel section as provided for in this section. However, the minimum total width of a drainage maintenance and utility easement shall be no less than the following:

Cubic Feet per second in 100-year storm
Drainage Maintenance and Utility Easement

From 5-16	30' centered
From 17-70	60' centered
Greater than 70	100' plus width of channel centered

The drainage maintenance and utility easement width shall be centered on the typical required drainage channel section, unless the City Council approves other drainage maintenance and utility easement alignments because of topographical conditions.

- (c) In case of severe topography, additional width may be required to assure reasonable ease of maintenance.
- (d) The drainage maintenance and utility easement topography may be modified. In such cases, the approved typical required drainage channel section shall include the necessary channel to accommodate a 100-year flood. The area outside of the required drainage channel may be filled; but any resulting slope shall be no steeper than three to one, unless the slope is protected by masonry paving, rip-rap, or other material which meet the city specifications.
- (e) Where, in the opinion of the Director of Engineering, suitable access to the drainage maintenance and utility easement is not otherwise provided, access shall be guaranteed by a suitably located access easement which shall be no less than 20 feet in width.
- (f) It shall be the responsibility of the owner to provide maintenance to all streams located on the property. However, in the event the City Council determines that it is in the public interest to alter the typical required channel section and/or profile of the stream in order to improve flow, the city may enter upon the property within the indicated access or drainage maintenance and utility easement and carry out the necessary work without any liability for damage to the property, or improvements thereon, located within the indicated access and/or drainage maintenance and utility easement.
- (g) Drainage maintenance and utility easements may be utilized for any underground utility provided that:
 - i. Underground utility lines to be installed by any utility provider other than the city shall be subject to approval by the Director of Engineering.
 - ii. The governmental agency or private company installing underground lines after development has been completed by the owner of the property shall be responsible for the fencing, pavement and grassed areas disturbed by such installation.
 - iii. The city shall not be responsible for damage caused by the installation of additional lines by any private utility company.
 - iv. The city shall not be liable for damages to any improvements located within the drainage maintenance and utility easement area caused by maintenance of utilities located therein.
- (h) Buildings shall not be placed or constructed within the access or drainage maintenance and utility easement. All drives, parking areas, or other improvements, except for water-related improvements such as boat docks, shall be constructed no closer than two feet horizontally from the top of any back slope along any open watercourse.

(c) *Drinking water improvements.*

- (1) Any subdivision which has public water system lines available shall be required to extend the public water system throughout the subdivision to each lot located therein. All required water line extensions shall include appropriate valves, hydrants, taps and service to the property line of each lot as required by city standards.
- (2) For subdivisions within or partially within the city, the term "available" shall mean that there is an existing water line of adequate size and water flow and/or pressure either crossing the subdivision property or

immediately available from an adjacent public right-of-way of the city indicates its commitment to extend such a water line to the property line of the subdivision at no cost to the subdivider.

- (3) For the subdivisions located entirely outside the boundaries of the city, but within the jurisdiction of this chapter, the term “available” shall mean that there is an existing water flow and/or pressure within 150 feet of the outside boundary line of the subdivision or the city indicates its commitment to extend such a water line to within 150 feet of the property line of the subdivision at no cost to the subdivider and there are no legal or topographic problems which prevent the subdivider from connecting onto and extending the existing system to the subdivision. In the event, there are phases to the subdivision or else, the subdivision is a part of a larger tract of land owned or under the control of the subdivider, then, and in that event, public water service shall be deemed to be available if an existing or proposed public water system line extends or will be extended to within 150 feet of the larger tract of land.
- (4) In the event the city elects not to extend a water line of sufficient size, flow and/or pressure, to the subdivision (if in the city) or within 150 feet of the subdivision boundary (if in the perimeter area) because of topographic features, legal obstacles, or financial reasons, then, the subdivider shall not be required to extend water lines to each lot nor provide water service to the subdivision.

(d) *Sanitary sewerage improvements.*

- (a) Any subdivision which has public sewer system lines available shall be required to extend the public sewer system throughout the subdivision to each lot located therein. All required sewer line extensions shall include appropriate manholes, lift stations, pumps, clean outs, taps and service to the property line of each lot as required by city standards.
- (b) For subdivisions within or partially within the city, the term “available” shall mean that there is an existing sewer line of adequate size and flow either crossing the subdivision property or immediately available from an adjacent public right-of-way or the city indicates its commitment to extend such a sewer line to the property line of the subdivision at no cost to the subdivider.
- (c) For subdivisions located entirely outside the boundaries of the city, but within the jurisdiction of this chapter, the term “available” shall mean that there is an existing sewer line of adequate size and flow within 150 feet of the outside boundary line of the subdivision at no cost to the subdivider and there are no legal or topographic problems which prevent the subdivider from connecting onto and extending the existing system to the subdivision. In the event, there are phases to the subdivision or else the subdivision is a part of a larger tract of land owned or under control of the subdivider, then, and in that event, the public sewer service shall be deemed to be available if an existing or proposed public sewer system line extends or will be extended to within 150 feet of the larger tract of land.
- (d) In the event the city elects not to extend a water line of sufficient size and flow, to the subdivision (if in the city) or within 150 feet of the subdivision boundary (if in the perimeter area) because of topographic features, legal obstacles, or financial reasons, then, the subdivider shall not be required to extend sewer lines to each lot nor provide sewer service to the subdivision.

(e) *Sidewalk improvements.* Sidewalks shall be installed as required herein within the street right-of-way. All required sidewalks shall be constructed in accordance with city standards as follows:

- (1) Where a subdivision adjoins an existing or proposed, major or minor thoroughfare as shown on the thoroughfare plan, a sidewalk shall be constructed along the adjoining frontage of the thoroughfare.
- (2) Where a subdivision adjoins a street or will adjoin an extension of a street, which has sidewalk on one or both sides within 500 feet of the boundary of the land to be subdivided, a sidewalk shall be constructed along the adjoining frontage of such street in such a way as the existing sidewalk pattern will be extended.
- (3) Where a residential subdivision creates or proposes to create as part of the subdivision, (whether immediate or future) a community facility, public or private, such as a school, day care center, recreation center, swimming pool or similar facility, or a commercial/industrial center of any type, a system of sidewalks shall be constructed leading to any community facility or commercial/industrial center in an amount equal to one linear foot of sidewalk for each two feet of length of public street within the subdivision.

- (4) In a subdivision where a substantial concentration of school pedestrian traffic is anticipated, sidewalks shall be constructed on both sides of the streets along the route of the concentration within the subdivision; provided that:
- a. Sidewalk shall not be required to be extended more than one-quarter mile by normal pedestrian routes from the point of access to the school grounds, except to include the full length of a block which would otherwise have such sidewalks for only a portion of its length.
 - b. Where a pattern of proposed and potential development is such that safe, logical, and convenient routing of school pedestrian traffic requires sidewalk on only one side of the street, the City Council may permit the provision of only one sidewalk.
- (5) In lieu of all or part of the required sidewalk installation required above, an owner, subdivider or other developer may, with the approval of the City Council at the time the preliminary plan is approved, make a payment to the city in an amount determined by multiplying the linear footage of the sidewalk required by the current estimated cost per foot of sidewalk less any grading costs, as may be computed by the Director of Engineering. Such funds shall be set aside by the city to be used to build sidewalks in areas that would better serve the particular subdivision or other nearby subdivisions so that the system of sidewalks may be extended in an orderly manner and may be tied together by logical extensions.

In any case where a subdivision would otherwise be determined to be a minor subdivision (and therefore approved administratively), the owner, subdivider or developer may at his or her own option, make a payment to the city in lieu of the required sidewalk installation and the development shall continue to be considered as a minor subdivision.

The amount of the payment shall be determined in the same manner set out above.

(f) *Street name signs.* In subdivisions located outside the city limits, street name signs shall be installed at the appropriate locations in accordance with the standards and specifications of Burke County. Inside the city limits, the city will install standard street name signs at appropriate locations. The subdivider may, however, with the approval of the Public Works Director of design and material, install a different street name sign type at no cost to the city. In such case, the subdivider or his successors or assignees shall be responsible for replacing such signs in instances of loss, damage or deterioration; otherwise, the city will replace such signs with its standard sign.

(g) *Traffic control signs and markings.* In subdivisions outside the city limits, the traffic signs and pavement markings shall be installed in accordance with the standards and specifications of the North Carolina Department of Transportation. Inside the city limits, the city will install traffic control signs and pavement markings.

(h) *Street lights.* The city will install street lights where appropriate in accordance with existing city policy.

(i) *Monuments.* Monuments and other property markers as are required by North Carolina General Statutes Chapter 39, Article 5A and as are specified by the "Standards of Practice for Land Surveying" in North Carolina shall be installed where appropriate.

(j) *Warranty against defects.*

- (1) Prior to the acceptance of the city of any improvements in any subdivision, the subdivider shall furnish to the city a written warranty against defects which shall guarantee the material and workmanship for a period not less than one year from the date of such acceptance. The warranty shall be accompanied by a financial guarantee payable to the city equal at least 10% of the cost of the installation of such improvements as determined by the Director of Engineering. The financial guarantee shall be in the form of financial guarantee as provided for in 9-3005(a)(1) or (2) of this chapter.
- (2) Upon successful performance of the improvements, as determined by the Director of Engineering, for the one-year period, the financial guarantee shall be returned to the subdivider. Upon the failure of an improvement to perform within the generally accepted standards for the type improvement as determined by the Director of Engineering, the subdivider shall be notified and given a reasonable period of time to correct the defects. Should the subdivider fail to act, fail to act in a timely manner, or otherwise fail to correct the defect(s), the Director of Engineering shall find the subdivider in default and proceed in the same manner as provided for in 9-3005(c) of this chapter.

(Ord. 91-49, 12-2-91; Am. Ord. 93-14, passed 4-5-93)

Sec. 9-3005. Guarantee of required improvements; oversized facilities.

(a) *Financial guarantee in lieu of immediate installation for approval.* In lieu of requiring the completion, installation and inspection of all or any part of the required improvements as described in 9-3004 prior to final plat approval, the city may enter into contract with the subdivider whereby the subdivider shall agree to complete all required improvements. Once the agreement is signed by both parties and the security required herein is provided, the final plat may be approved if all other requirements of this chapter are met. To secure this contract, the subdivider shall provide either of, or a combination of, the following guarantees to cover the costs of the proposed improvements:

(1) Cash or equivalent security.

- a. The subdivider shall deposit cash, an irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the city or in escrow with a financial institution. The use of any instrument other than cash shall be subject to the approval of the city. The amount of deposit shall be equal to 120% of the estimated cost as approved by the Director of Engineering, of installing all required improvements. The initial cost estimate shall be the responsibility of the subdivider but the approval of the final cost estimate shall be made by the Director of Engineering.
 - b. If cash or other instrument is deposited in escrow with a financial institution as provided above, then the subdivider shall file with the city an agreement between the financial institution and himself guaranteeing the following:
 - (d) That the escrow account shall be held in trust until released by the city and may not be used or pledged by the subdivider for any other purpose during the term of the escrow arrangement; and
 - (e) That in the case of a failure on the part of the subdivider to complete improvements within the time allotted, the financial institution shall, upon notification by the city and submission by the city to the financial institution of an estimate of the amount needed to complete the improvements, immediately either pay to the city the funds estimated to complete the improvements, up to the full balance of the escrow account, or deliver to the city any other instruments fully endorsed or otherwise made payable in full to the city.
- (2) Governmental guarantee. In any case where a required improvement is to be provided by the state or any local government other than the city, the subdivider may provide, in lieu of the types of financial guarantee as provided for above, a letter from the appropriate state or local government official guaranteeing the installation of the improvement in the required manner and within the time allotted. Provided, however, in any case where the cost of such improvement exceeds \$10,000 as determined by the city, such governmental guarantee shall be in the form of an approved Project Budget Ordinance where local government is to be the provider and an equivalent document where the state is to be the provider.

(b) *Duration of financial guarantees*

- (a) The duration of a financial guarantee shall be of a reasonable period to allow for completion and acceptance of improvements. In no case shall the duration of the financial guarantee for improvements exceed 18 months.
 - (2) All subdivisions whose public improvements are not completed and accepted at least thirty days prior to the expiration of the financial guarantee shall be considered to be in default, unless said guarantee is extended with the consent of the Subdivision Administrator to a future date certain not to exceed six months.

(c) *Default.*

- (1) Upon default, meaning failure on the part of the subdivider to complete the required improvements in a timely manner as specified in the escrow agreement, the surety or the financial institution holding the escrow account shall, if requested by the city, pay all or any portion of the escrow fund to the city. Upon payment, the city, at its discretion, may expend such portion of said funds as deemed necessary to complete all or any portion of the required improvements. The city shall return to the subdivider any funds not spent in completing the improvements. Default on a project does not release the subdivider from liability/responsibility for the completion of the improvements.

(d) *Release of guarantee security.* The city may release a portion or all of any security posted as the improvements are completed and approved by the city.

(e) *Oversized water and sewer facilities.* The city may, in order to serve future development, require the subdivider to install certain oversized water and sewer improvements and/or to increase such improvements to a size and/or extent beyond that necessary for the needs created by the subdivision. In such cases, the city shall enter into an agreement to reimburse the subdivider for the oversizing and/or extension base upon rates as agreed to by the city.

d. 91-49, 12-2-91)

Sec. 9-3006. Legal Provisions.

(a) *Interpretation, purpose, conflict.*

(1) In interpreting and applying the provisions of this chapter, the requirements established hereunder shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. It is not intended by this chapter to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this chapter imposes a greater restriction or imposes higher standards than those required by other ordinances, rules, regulations, or by easements, covenants, or agreements the provisions of this chapter shall govern so that, in all cases, the most restrictive limitation or requirement shall govern. Provided, however, in any case where the Zoning Code specifically permits a development type not otherwise provided for in this chapter, the Zoning Code shall prevail.

(2) Standards. In interpreting the provisions of this chapter, the term “standards” or “city standards” shall be interpreted to mean written standards adopted by the City Council which set forth the general requirements concerning certain improvements required hereunder. Those standards may specifically refer to street construction standards, storm drainage improvement standards, drinking water improvement standards, sanitary sewage improvement standards and sidewalk improvement standards. When approved by the City Council, such standards shall be incorporated into this chapter and made a part of this chapter as if fully set forth herein and compliance with those standards shall be required. A copy of such standards showing the date of approval by the Council shall be made available to the public upon request. All such standards shall not be amended except by approval by the City Council. It is intended that such standards shall be the minimum requirements established hereunder. It is not intended that such standards should conflict with this chapter, with other existing city policies or other ordinances in effect in the city; however, in the event there is such a conflict, the greater restriction or the highest standard shall govern.

a. *Repeal and reenactment of existing subdivision code.* The rewriting of this chapter in part carries forth by reenactment some of the provisions of the existing Subdivision Code of the city and it is not intended to repeal but rather to reenact and continue in force such existing provisions so that all rights and liabilities that have been accrued are preserved and may be enforced. All provisions of the Subdivision Code which are not reenacted herein and hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of the Subdivision Code in effect, which are now pending in any of the courts of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this chapter, but shall be prosecuted to their finality the same as if this chapter had not been adopted; and any and all violations of the existing chapter, prosecutions for which have not been instituted, may be filed and prosecuted; and nothing in this chapter shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending and/or which may have been instituted or prosecuted.

(c) *Effect upon outstanding preliminary plats.*

(1) Nothing herein contained shall require any change in any preliminary plat which has received approval by the city prior to the time of the adoption of this chapter provided that such preliminary plat has been prosecuted to completion and a final plat recorded in the office of the Register of Deeds within 18 months after the time of adoption of this chapter. If the final plat of all or part of the area shown on any previously approved preliminary plat is not recorded in the office of the Register of Deeds within 18

months after the time of the adoption of this chapter, such non-recorded area shall be subject to all the provisions of this chapter.

- (2) After the effective date of this chapter, any final plat to be recorded based upon any outstanding preliminary plat shall follow the final plat approval procedures of this chapter including the guarantee of installation provisions.
- (3) In addition, nothing herein contained shall require any change in any final plat which has received approval by the city prior to the time of the adoption of this chapter provided that such final plat is prosecuted to completion in accordance with the terms of approval. In the event of default or the failure of the subdivider to perform in accordance with the conditions as approved, the city may, at its option, take lawful action pursuant to the Subdivision Code in existence at the time of the final plat approval or this chapter.

(d) *Effect upon new territory added to jurisdiction.* When new territory is added to the jurisdiction of this chapter, such new territory shall immediately become subject to the provisions of this chapter. Any proposed subdivision or any subdivision in progress within such new territory shall proceed only in accordance with the following:

9- Any subdivision for which a final plat has been recorded in the Register of Deeds Office pursuant to the approval of another local government, but which is subject to an outstanding guarantee to such local government, for the installation of subdivision improvements, shall remain under the subdivision control of such local government until such time as such subdivision shall have been prosecuted to completion. Provided, however, the city may not accept the dedication of any street or street improvements unless such street and street improvements meet the standards of this chapter and the city's policy for acceptance of streets for use and maintenance by the city.

10- All other subdivisions shall meet all of the requirements of this chapter and it shall be the responsibility of the subdivider of any proposed subdivision or subdivision in progress to receive approval as provided for in this chapter before proceeding with any development. The subdivider shall arrange a conference with the subdivision administrator who shall determine the level and type of approval required and provide the subdivider with an approval track for the particular case.

(e) *Modifications.* The City Council may modify the requirements of this chapter where, because of the size or shape of the tract to be subdivided, its topography, the condition or nature of adjoining areas, or the existence of other unusual physical conditions, strict compliance with the provisions of this chapter would cause an unusual and unnecessary hardship on the subdivider. In granting modifications, the City Council may require such conditions as will secure, insofar as practical, the objectives or requirements modified. In no case however, shall the City Council acting pursuant to this section, modify the terms or requirements of the Zoning Code or the Flood Damage Prevention Code. Violation of any condition shall constitute a violation of this chapter. A modification granted as a part of a plan approval shall have the same duration as the plan approval.

(f) *Amendment.* The City Council may from time to time, amend the terms of this chapter after a public hearing has been held and notice given as required by North Carolina General Statutes 160A-364. However, any proposed amendment shall be submitted for the to the Planning and Zoning Commission for review and recommendation prior to City Council action. The Planning and Zoning Commission shall have 45 days from the date such amendment is first submitted for review to the Commission to make its recommendation. If the Planning and Zoning Commission fails to make its recommendation within the specified time, it shall be deemed to have recommended in favor of the amendment.

(g) *No liability.* Acceptance of dedication of lands or facilities located within the jurisdiction of this chapter but outside the city limits shall not place on the city any duty to open, operate, repair or maintain any street, utility line, or other land or facility and the city shall in no event be held to answer in any civil action or proceeding for failure to open, repair or maintain any street located outside its corporate limits.

(h) *Violations; penalty.*

(1) After the effective date of this chapter, no subdivision plat of land within the jurisdiction of this chapter shall be filed or recorded until it shall have been submitted to and approved by the appropriate approval authority. The Register of Deeds shall not file or record a plat of subdivision of land subject to this chapter that has not been approved in accordance with this chapter nor shall the Clerk of Superior court order or direct the recording of a plat if the recording would be in conflict with the provisions of this chapter.

- (2) After the effective date of this chapter, any person who, being the owner or agent of the owner of any land within the jurisdiction of this chapter, thereafter subdivides his land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this chapter and recorded in the Office of the Register of Deeds shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from such penalty.
 - (3) Any violation of this chapter shall be an infraction or misdemeanor as defined in G.S. 14-4 and shall be punishable as provided in G.S. 14-4.
 - (4) In addition to the penalty provided above, a violation of the chapter shall also be a civil offense and shall subject the offender to a civil penalty in the amount of \$50. Any person violating this chapter shall be issued a written citation in accordance with 1-1005 of this Code.
 - (5) The written citation may be issued by the Zoning Enforcement Officer, any building inspector, any public safety officer or any other enforcement officer authorized by the City Manager.
 - (6) The penalty shall be paid to the tax collector at the city within 72 hours from the time of issuance of the written citation.
 - (7) Each day's continuing violation shall be a separate and distinct offense.
 - (8) In addition to the penalties imposed above, the provisions of this chapter may also be enforced through equitable remedies issued by a court of competent jurisdiction including injunction and order of abatement or any other remedy permitted under this code.
- (i) *Validity.* If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have passed this chapter and each section, subsection, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

d. 91-49, 12-2-91)