

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 29 WATER SUPPLY WATERSHED MANAGEMENT AND PROTECTION, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Chapter 29 is amended by deleting the same in its entirety and substituting the following therefor:

CHAPTER 29 – WATER SUPPLY WATERSHED MANAGEMENT AND PROTECTION

Article I. - Authority and General Regulations

Sec. 29-1 Authority and Enactment

Pursuant to the authority provided in the G.S. 160A-174 et seq., (general ordinance-making power) and G.S. 143-214.5 (water supply watershed protection), whereby the General Assembly of the state delegated the responsibility for or directed local governmental units to adopt ordinances and regulations designed to promote the public health, safety, and general welfare of their citizenry, the city council does hereby ordain and enact into law this chapter as the water supply watershed management and protection ordinance. The short title of this chapter for purposes of reference shall be the "Water Supply Watershed Protection Ordinance," which may also be referred to in this chapter as this "ordinance."

(Code 1961, § 31A-1)

Sec. 29-2. Jurisdiction

The provisions of this chapter shall apply within the areas designated as a Water Supply Watershed by the North Carolina Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of Fayetteville, North Carolina" (the watershed map), which is adopted simultaneously with this chapter. The watershed map and all explanatory matter contained thereon is incorporated by reference as if fully set forth in this chapter. The ordinances shall be permanently kept on file in the [insert where the ordinances will be kept] of the City.

(Code 1961, § 31A-2)

Sec. 29-3. Exceptions to Applicability

- a. Nothing contained in this chapter shall repeal, modify, or amend any federal or state law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this chapter amend, modify, or restrict any provisions of this Code; however, the adoption of this chapter shall and does amend any and all ordinances, resolutions, and regulations in effect in the City at the time of adoption of the ordinance from which this chapter is derived that may be construed to impair or reduce the effectiveness of such ordinance or to conflict with any of its provisions.

- b. It is not intended that the regulations of this chapter interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.
- c. Existing development, as defined in this chapter, is not subject to the requirements of this chapter.
- d. Expansions to structures classified as existing development must meet the requirements of this chapter, except single family residential development unless expansion is part of a common plan of development. In an expansion, the built-upon area of the existing development is not required to be included in the density calculations. Where there is a net increase of built upon area, only the area of net increase is subject to this chapter. Where existing development is being replaced with new built upon area, and there is net increase of built upon area, only areas of net increase shall be subject to this chapter.
- e. If a Nonconforming Lot of Record is not contiguous to any other lot by the same party, then that lot of record shall not be subject to the development restrictions of this ordinance if it is developed for single-family residential purposes. The Watershed Review Board may, in its discretion, require the combination of contiguous Nonconforming Lots of Record owned by the same party to establish a lot or lots that meet requirements in Article II of this chapter.]
- f. Any lot or parcel created as part of a Family Subdivision after the effective date of these rules shall be exempt from these rules if it is developed for one single-family detached residence and if it is exempt from local subdivision regulation.
- g. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to the land use requirement (including impervious surface requirements) of these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.

(Code 1961, § 31A-3)

Sec. 29-4. Schedule of Fees for Subdivision Approval, Appeals, Minor Variances, Major Variances.

The City Council shall adopt a schedule of fees to be charged for the various approvals, applications, variances, and appeals set forth in this chapter. The schedule shall be kept in the office of the Clerk of the Watershed Review Board.

(Code 1961, § 31A-6)

Sec. 29-5. Criminal Penalties

Any person violating any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with NCGS 14-4. The maximum fine for each offense shall not exceed five hundred dollars (\$500.00). Each day that the violation continues shall constitute a separate offense.

Sec. 29-6. Remedies.

- a. If any subdivision, development and/or land use is found to be in violation of this chapter, the Watershed Review Board may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of five hundred (\$500.00) per day, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the

premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

- b. If the City Manager or designee finds that any of the provisions of this ordinance are being violated, the City Manager or designee shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The City Manager or designee shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the City Manager or designee is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.
(Code 1961, § 31A-67)

Sec. 29-7. Repeal of Existing Watershed Ordinance

This chapter in part carries forward by re-enactment, some of the Water Supply Watershed Protection Ordinance of the City adopted as of November 18, 2013, and it is not the intention to repeal but rather to re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced. All provisions of the Water Supply Watershed Protection Ordinance which are not re-enacted herein are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of any ordinance provisions heretofore in effect, which are now pending in any court of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this ordinance, but shall be prosecuted to their finality the same as if this ordinance had not been adopted; and any and all violations of the existing Water Supply Watershed Protection Ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and nothing in this ordinance shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

Sec. 29-8. Severability

Should any Section or provision of this chapter be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this chapter as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Sec. 29-9. Effective Date

This chapter shall take effect and be in force on October 24, 2022.

Secs. 29-10-29-30. Reserved.

Article II. - Subdivision Regulations

Sec. 29-31. General Provisions

- a. No subdivision plat of land within the Water Supply Watershed shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this Article. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this Article.

- b. The approval of a plat does not constitute or effect the acceptance by the City or the public of the dedication of any street or other ground, easement, right-of-way, public utility line, or other public facility shown on the plat and shall not be construed to do so.
- c. All subdivisions shall conform with the mapping requirements contained in G.S. 47-30.
- d. All subdivisions of land within the jurisdiction of the City after the effective date of this chapter shall require a plat to be prepared, approved, and recorded pursuant to this chapter.

(Code 1961, § 31A-10)

State law reference— Effect of plat approval on dedications, G.S. 160A-374 et seq.

Sec. 29-32. Subdivision Application and Review Procedures

- a. All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the City Manager or designee to determine whether or not the property is located within the designated Water Supply Watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this chapter and may be recorded provided the City Manager or designee initials the vicinity map. City Manager or designee Subdivisions within a WS-IV watershed are subject to the provisions of this chapter only when an erosion and sedimentation plan is required under the provisions of State law or approved local program, unless another stormwater program applies. Subdivisions within the designated watershed area shall comply with the provisions of this Article and all other state and local requirements that may apply.
- b. Subdivision applications shall be filed with the City Manager or designee. The application shall include a completed application form, two (2) copies of the plat, a description of the proposed method of providing stormwater drainage, and supporting documentation deemed necessary by the City Manager or designee or the Watershed Review Board.
- c. The City Manager or designee shall review the completed application and shall either approve, approve conditionally, or disapprove each application. The City Manager or designee shall take final action within forty-five (45) days of submission of the application. The City Manager or designee or the Watershed Review Board may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their comments and recommendations shall not delay the City Manager or designee's action within the prescribed time limit. Such public agencies may include, but are not limited to, the following:
 - a. The NCDOT district highway engineer with regard to proposed streets and highways.
 - b. The director of the Health Department with regard to proposed private water system or sewer systems normally approved by the Health Department.
 - c. The state Division of Water Resources with regard to proposed sewer systems normally approved by the division.
 - d. The North Carolina Division of Energy, Mineral and Land Resources with regard to engineered stormwater controls or stormwater management in general.
 - e. The county for subdivisions located in Extraterritorial Jurisdiction (ETJ) of a municipality.
 - f. Any other agency or official designated by the City Manager or designee or Watershed Review Board.
- d. If the City Manager or designee approves the application, such approval shall be indicated on both copies of the plat by the following certificate and signed by the City Manager or designee.

Certificate of Approval for Recording

I certify that the plat shown hereon complies with the Water Supply Watershed Protection Ordinance and is approved by the Watershed Review Board for recording in the Register of Deeds office.

Date

City Manager or designee

NOTICE: This property is located within a public water supply watershed—development restrictions may apply.

- e. If the City Manager or designee disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant and entered in the minutes. The Subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review.
- f. As a condition for approval, all subdivision plats shall comply with the requirements for recording of County Register of Deeds.
- g. The plat shall be recorded within [10] days of approval. The Subdivider shall provide the City Manager or designee with evidence the plat has been recorded with the register of deeds within five (5) working days.

(Code 1961, § 31A-11)

Sec. 29-33. Subdivision Standards and Required Improvements

- a. *Adequate building space.* All lots shall provide adequate building space in accordance with the development standards contained in Article III of this chapter. Lots smaller than the minimum required for residential lots may be developed using built-upon area criteria in accordance with Article III.
- b. *Calculation of total project area.* For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
- c. *Stormwater drainage facilities.* The application shall be accompanied by a description of the proposed method of providing stormwater drainage. The Subdivider shall provide a drainage system that diverts stormwater runoff away from the surface waters, incorporates Stormwater Control Measures to minimize water quality impacts, incorporates Best Management Practices (BMP) where roads and utilities cross a buffer, and meets all other applicable local requirements.
- d. *Erosion and sedimentation control.* The application shall, where required, be accompanied by a Sedimentation and Erosion Control Plan approval by the city engineer or, if applicable, the North Carolina Division of Energy, Mineral and Land Resources, Land Quality Section.
- e. *Roads constructed in critical areas and watershed buffer areas.* Where possible, roads should be located outside of critical areas and watershed vegetated conveyance areas. Roads constructed within these areas shall be designed and constructed so to minimize their impact on water quality. Adherence to North Carolina Department of Transportation best management standards is required.

(Code 1961, § 31A-12)

Sec. 29-34. Construction Procedures

- a. No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved by the City Manager or designee.
- b. No building or other permits shall be issued for erection of a structure on any lot not on record at the time of adoption of the ordinance from which this chapter is derived until all requirements of this chapter have been met. The Subdivider, prior to commencing any work within the subdivision, shall make arrangements with the City Manager or designee to provide for adequate inspection.

(Code 1961, § 31A-13)

Sec. 29-35. Penalties for Transferring Lots in Unapproved Subdivisions

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the City, thereafter subdivides his land in violation of 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 in violation of this chapter and subject to penalties and remedies outlined in Section 29-6. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The City may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this ordinance.

(Code 1961, § 31A-14)

Secs. 29-36—29-60. Reserved

Article III. - Development Regulations

Sec. 29-61. Establishment of Watershed Areas

- a. The purpose of this Article is to list and describe the watershed areas adopted in this chapter.
- b. For purposes of this chapter the City is hereby divided into the following areas, as appropriate:

- WS-I
- WS-II-CA (Critical Area)
- WS-II-BW (Balance of Watershed)
- WS-III-CA (Critical Area)
- WS-III-BW (Balance of Watershed)
- WS-IV-CA (Critical Area)
- WS-IV-PA (Protected Area)

(Code 1961, § 31A-20)

Sec. 29-62. Watershed Areas Described

- a. WS-IV watershed areas—Critical area (WS-IV-CA). Only new development activities that require an erosion/sedimentation control plan under state law or approved local program are required to meet the provisions of this chapter when located in the WS-IV watershed. In order to address a moderate to high land use intensity pattern, development must be limited to no more than two dwelling units per acre or 24 percent built-upon area, whichever is least restrictive. New sludge application sites and landfills are specifically prohibited. High density

options using engineered stormwater control devices are permitted in this district. Development shall not exceed 50 percent built-upon area. (See Article VII of this chapter.)

1. Allowed uses. Allowed uses in the WS-IV watershed area—critical area (WS-IV-CA) shall be as follows:
 - a. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993, shall maintain a minimum ten-foot vegetative buffer, or equivalent control as determined by the soil and water conservation commission, along with all perennial waters indicated on the most recent versions of USGS 1: 24,000 (7.5 minute) scale topographic maps or as determined by Watershed Review Board studies. Animal operations greater than 100 animal units shall employ best management practices by July 1, 1994, recommended by the soil and water conservation commission.
 - b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality, 02 NCAC 60C .0100 to .0209.
 - c. Residential subject to the density requirements in 15A NCAC 02B .0624
 - d. Nonresidential development, excluding:
 1. The storage of any Toxic Substance or Hazardous Material unless a spill containment plan is implemented;
 2. New landfills; and
 3. New permitted petroleum contaminated soil sites.
2. Density and built-upon limits. Density and built-upon limits in the WS-IV-CA watershed shall be as follows:
 - a. Development shall not exceed two dwelling units per acre; or
 - b. Residential and nonresidential development shall not exceed 24 percent built-upon area on a project by project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
- b. WS-IV Watershed areas—Protected area (WS-IV-PA). Only new development activities that require an erosion/sedimentation control plan under state law or approved local government program are required to meet the provisions of this chapter when located in a WS-IV watershed. In order to address a moderate to high land use intensity pattern, development must be limited to no more than two dwelling units per acre or 24 percent built-upon area, whichever is least restrictive. High density options using engineered stormwater control devices are permitted in this district. High Density Development shall not exceed 70 percent built-upon area. (See Article VII of this chapter.)
 1. Uses allowed: Allowed uses in the WS-IV Watershed areas—Protected area (WS-IV-PA) shall be as follows:
 - a. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990.
 - b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality, 02 NCAC 60C .0100 to .0209
 - c. Residential development subject to the density requirements in 15A NCAC 02B .0624
 - d. Nonresidential development, excluding the storage of any Toxic Substance or Hazardous Material unless a spill containment plan is implemented;

- (Code 1961, § 31A-21)

[illegible]

Notes:

^a Permitted pursuant to 15A NCAC 02B .0104

^b Except non-process industrial discharges are allowed

^c Only allowed if specified in 15A NCAC 02B .0104

^d Not allowed if activity(ies) has/have adverse impact on human health

^e Where no other practical alternative exists

^f In WS-I watersheds and Critical Areas of WS-II, WS-III, and WS-IV watersheds, agricultural activities conducted after 1/1/1993 shall maintain a minimum 10-foot vegetated setback or equivalent control as determined by SWCC along all perennial waters indicated on most recent version of USGS 1:24000 scale (7.5 minute) topographic maps or as determined by Watershed Review Board studies

^g Subject to Forest Practice Guidelines Related to Water Quality (02 NCAC 60C .0100 to .0209) Effective 4/1/2018

^h See density requirements in 15A NCAC 02B .0624

ⁱ See different allowed and not allowed in this table

^j See following WS-I note

^k NPS pollution shall not have adverse impact, as defined in 15A NCAC 02H .1002, on use as water supply or any other designated use

^l Deemed permitted, as defined in 15A NCAC 02T .0103 and permitted under 15A NCAC 2H .0217

Sec. 29-64. Watershed Areas—Density and Built Upon Areas

1. PROJECT DENSITY. The following maximum allowable project densities and minimum lot sizes shall apply to a project according to the classification of the water supply watershed where it is located, its relative location in the watershed, its project density, and the type of development:

Water Supply Classification	Location in the Watershed	Maximum Allowable Project Density or Minimum Lot Size		
		Low Density Development		High Density Development
		Single-family detached residential	Nonresidential and all other residential	All types
WS-I	Not Applicable: Watershed shall remain undeveloped except for the following uses when they cannot be avoided: power transmission lines, restricted access roads, and structures associated with water withdrawal, treatment, and distribution of the WS-I water. Built-upon area shall be designed and located to minimize stormwater runoff impact to receiving waters.			
WS-II	Critical Area	1 dwelling unit (du) per 2 acres or 1 du per 80,000 square foot lot excluding	6% built-upon area	6 to 24% built-upon area

		roadway right-of-way or 6% built-upon area		
	Balance Watershed of	1 du per 1 acre or 1 du per 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area	12% built-upon area	12 to 30% built-upon area
WS-III	Critical Area	1 du per 1 acre or 1 du per 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area	12% built-upon area	12 to 30% built-upon area
	Balance Watershed of	1 du per one-half acre or 1 du per 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
WS-IV	Critical Area	1 du per one-half acre or 1 du per 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
	Protected Area	1 du per one-half acre or 1 du per 20,000 square foot lot excluding roadway right-of-way or 24% built-upon; or 3 du per acre or 36% built-upon area without	24% built-upon area; or 36% built-upon area without curb and gutter street system	24 to 70% built-upon area

		curb and gutter street system		
WS-V	Not Applicable			

2. **CALCULATION OF PROJECT DENSITY.** The following requirements shall apply to the calculation of project density:
 - a. Project density shall be calculated as the total built-upon area divided by the total project area:
 - b. A project with “existing development” as that term is defined in 15A NCAC 02B .0621, may use the calculation method in Sub-Item (a) of this Item or may calculate project density as the different of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing build-upon area.
 - c. Expansions to existing development shall be subject to 15A NCAC 02B .0624 except as excluded in Rule 15A NCAC 02B .0622(1)(d).
 - d. Where there is a net increase of built-upon area, only the area of net increase shall be subject to 15A NCAC 02B .0624.
 - e. Where existing development is being replaced with new built-upon area, and there is a net increase of built-upon area, only the area of net-increase shall be subject to 15A NCAC 02b .0624;
 - f. Total project area shall exclude the following:
 - i. Areas below the Normal High Water Line (NHWM); and
 - ii. Areas defined as “coastal wetlands” pursuant to 15A NCAC 07H .0205, herein incorporated by reference, including subsequent amendments and editions.; and
 - g. Projects under a common plan of development shall be considered as a single project for purposes of density calculation except that on a case-by-case basis, the Watershed Review Board may allow projects to be considered to have both high and low density areas based on one or more of the following criteria:
 - iii. Natural drainage area boundaries
 - iv. Variations in land use throughout the project; or
 - v. Construction phasing.
3. **LOW DENSITY PROJECTS.** In addition to complying with the project density requirements of Item (1) of this Section, low density projects shall comply with the following:
 - a. **VEGETATED CONVEYANCES.** Stormwater runoff from the project shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum extent practicable. In determining whether these criteria have been met, the Watershed Review Board and City Manager or designee shall take into account site-specific factors such as topography and site layout as well as protection of water quality. Vegetated conveyances shall be maintained in perpetuity to ensure that they function as designed. Vegetated conveyances that meet the following criteria shall be deemed to satisfy the requirements of this Sub-Item:
 - i. Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the Watershed Review Board that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and

- ii. The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm event as demonstrated by engineering calculations.
 - b. CURB OUTLET SYSTEMS. In lieu of vegetated conveyances, low density projects shall have the option to use curb or gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:
 - iii. The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10-year storm and at a non-erosive velocity;
 - iv. The longitudinal slope of the swale or vegetated area shall not exceed five percent except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollution delivery shall be provided;
 - v. The swale's cross section shall be trapezoidal with a minimum bottom width of two feet;
 - vi. The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);
 - vii. The minimum length of the swale or vegetated areal shall be 100 feet; and
 - viii. Low density projects may use treatment swales designed in accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in Sub-Items (i-v) of this Item.
- 4. HIGH DENSITY PROJECTS. In addition to complying with the project density requirements of Item (1) of this Section, high density projects shall comply with the following:
 - a. Stormwater Control Measures (SCMs) shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in 15A NCAC 02B .0621;
 - b. For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch in the Protected Area (WS-IV-PA) and one and one half inch in the Critical Area (WS-IV-CA). Applicants shall have the option to design projects to achieve runoff volume match in lieu of runoff treatment;
 - c. Stormwater runoff from off-site areas and "existing development," as that term is defined in 15A NCAC 02B .0621, shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in sizing of on-site SCMs;
 - d. SCMs shall meet the relevant MDC set forth in 15A NCAC 02H .1050 through .1062; and
 - e. Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.
- 5. OPTIONS FOR IMPLEMENTING PROJECT DENSITY. The Watershed Review Board shall have the following options in place of or in addition to the requirements of Item (a) above, as appropriate:
 - a. The Watershed Review Board may administer oversight of future development activities in single-family detached residential developments that exceed the applicable low density requirements by tracking dwelling units rather than percentage built-upon area, as long as the SCM is sized to capture and treat runoff from (1) all pervious and built-upon surfaces shown on the development plan and (2) any off-site drainage from

pervious and built-upon surfaces, and when an additional safety factor of 15 percent of built-upon area of the project site is figured in.

Sec. 29-65. Density Averaging

- a. An applicant may average development density on up to two noncontiguous properties for purposes of achieving compliance with the water supply watershed development standard if all of the following circumstances exist:
 - i. The properties are within the same water supply watershed. If one of the properties is located in the critical area of the watershed, the critical area property shall not be developed beyond the applicable density requirements for its classification.
 - ii. Overall project density meets applicable density or stormwater control requirements under 15A NCAC 2B .0200.
 - iii. Vegetated setbacks on both properties meet the minimum statewide water supply watershed protection requirements.
 - iv. Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.
 - v. Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainage ways.
 - vi. The property or portions of the properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to the City as a park or greenway, or placed under a permanent conservation or farmland preservation easement unless it can be demonstrated that the City can ensure long-term compliance through deed restrictions and an electronic permitting mechanism. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat, in homeowners' covenants, and on individual deed and shall be irrevocable.
 - vii. Development permitted under density averaging and meeting applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.
 - viii. A special use permit or other such permit or certificate shall be obtained from the Watershed Review Board to ensure that both properties considered together meet the standards of the Water Supply Watershed Protection Ordinance and that potential owners have record of how the watershed regulations were applied to the properties.

Sec. 29-66. Cluster Development

Clustering of development is allowed in all Watershed Areas [except WS-I] under the following conditions:

1. Minimum lot sizes are not applicable to single-family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in Section 29-33. Density or built-upon area for the project

shall not exceed that allowed for the critical area, balance of watershed, or protected area, whichever applies.

2. All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.
3. Areas of concentrated density development shall be located in upland area and away, to the maximum extent practicable, from surface waters and drainage ways.
4. The remainder of the tract shall remain in a vegetated or natural state. The title to the open space shall be conveyed to an incorporated homeowners' association for management; to the City for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds in the office of the county Register of Deeds.
5. Cluster developments that meet the applicable low-density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

(Code 1961, § 31A-22)

Sec. 29-67. Vegetated Setbacks Required

- a. A minimum one hundred (100) foot vegetative setback is required for all new development activities that exceed the low density option; otherwise, a minimum thirty (30) foot vegetative setback for development activities is required along all perennial waters indicated on the most recent versions of USGS 1: 24,000 (7.5 minute) scale topographic maps or as determined by Watershed Review Board studies. Desirable artificial streambank or shoreline stabilization is permitted. Where USGS topographic maps do not distinguish between perennial and intermittent streams, an on-site stream determination may be performed by an individual qualified to perform such stream determinations.
- b. No new development is allowed in the setback except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increases in impervious area and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from surface waters and maximize the utilization of stormwater Best Management Practices.

Sec. 29-68. Rules Governing the Interpretation of Watershed Area Boundaries

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply:

1. Where area boundaries are indicated as approximately following either street, alley, railroad, or highway lines or centerlines thereof, such lines shall be construed to be such boundaries.
2. Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be such boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the City Manager or designee as evidence that one or more properties along these boundaries do not lie within the watershed area.
3. Where the watershed area boundaries lie at a scaled distance more than twenty-five (25) feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map. The North Carolina

Environmental Management Commission adopted this provision with intention of locating built-upon surface area in the least environmentally sensitive area of the project.

4. Where the watershed area boundaries lie at a scaled distance of twenty-five (25) feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.
5. Where other uncertainty exists, the City Manager or designee shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Watershed Review Board.

(Code 1961, § 31A-24)

Sec. 29-69. Application of Regulations

- a. No building or land shall hereafter be used and no development shall take place except in conformity with the regulations specified in this Article for the watershed area in which it is located.
- b. No area required for the purpose of complying with the provisions of this chapter shall be included in the area required for another building.
- c. Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulations specified in this Article, except as permitted in Section 29-67
- d. If a use or class of use is not specifically indicated as being allowed in a watershed area, such use or class of use is prohibited.

(Code 1961, § 31A-25)

Sec. 29-70. Existing Development

Any existing development, as defined in this chapter, may be continued and maintained subject to the provisions provided in this chapter. Expansions to structures classified as existing development must meet the requirements of this chapter; however, the built-upon area of the existing development is not required to be included in the built-upon area calculations. Please see Section 29-64(2) Calculation of Project Density. This Section deals with existing development as defined in the North Carolina Environmental Management Commission rules. All existing development, whether or not it meets the statewide minimum standards, is exempt from the provisions of this ordinance.

1. *Uses of land.* This category consists of uses existing at the time of adoption of this chapter where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:
 - a. When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
 - b. Such use of land shall be changed only to an allowed use.
 - c. When such use ceases for a period of at least one year, it shall not be reestablished.
2. *Reconstruction of Buildings or Built-Upon Areas.* Any existing building or built-upon area not in conformance with the restrictions of this chapter that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on a single family residential development, provided:
 - a. Repair or construction is initiated within twelve (12) months and completed within two (2) years of such damage.

- b. The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.
- (Code 1961, § 31A-26)

Sec. 29-71. Watershed Protection Permit

- a. Except for a single-family residential development, no building or built-upon area shall be erected, moved, enlarged, or structurally altered, nor shall any building permit be issued, nor shall any change in the use of any building or land be made until a Watershed Protection Permit has been issued by the City Manager or designee. No Watershed Protection Permit shall be issued except in conformity with the provisions of this chapter.
- b. Watershed Protection Permit applications shall be filed with the City Manager or designee. The application shall include a completed application form and supporting documentation deemed necessary by the City Manager or designee.
- c. Prior to issuance of a Watershed Protection Permit, the City Manager or designee may consult with qualified personnel for assistance to determine if the application meets the requirements of this chapter.
- d. A Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

(Code 1961, § 31A-27)

Sec. 29-72. Building Permit Required

No permit required under the North Carolina State Building Code shall be issued for any activity for which a Watershed Protection Permit is required until that permit has been issued.

(Code 1961, § 31A-28)

29-73. Watershed Protection Occupancy Permit

- a. The City Manager or designee shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this chapter have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.
- b. A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied within ten (10) business days after the erection or structural alterations of the building. The applicant should notify the City Manager or designee and request the issued WSPOP when building is complete.
- c. When only a change in use or land or existing building occurs, the City Manager or designee shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this chapter have been met coincident with Watershed Protection Permit.
- d. If the Watershed Protection Occupancy Permit is denied, the City Manager or designee shall notify the applicant in writing stating the reasons for denial.
- e. No building or structure which has been erected, moved, or structurally altered may be occupied until the City Manager or designee has approved and issued a Watershed Protection Occupancy Permit.

(Code 1961, § 31A-29)

Secs. 29-74—29-90. Reserved

Article IV. - Public Health Regulations

Sec. 29-91. Public Health, in General

No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare.

(Code 1961, § 31A-31)

Sec. 29-92. Abatement

- a. The City Manager or designee shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.
- b. The City Manager or designee shall report all findings to the Watershed Review Board. The City Manager or designee may consult with any public agency or official and request recommendations.
- c. Where the Watershed Review Board finds a threat to water quality and the public health, safety and welfare, the Watershed Review Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

(Code 1961, § 31A-32)

Sec. 29-93—29-120. Reserved

Article V. - Administration, Enforcement and Appeals

Sec. 29-121. City Manager or designee and Duties thereof

The Watershed Review Board shall appoint a City Manager or designee, who shall be duly sworn in. It shall be the duty of the **City Manager or designee** to administer and enforce the provisions of this chapter as follows:

1. The City Manager or designee shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed in this chapter. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the City Manager or designee.
2. The City Manager or designee shall serve the Watershed Review Board for purposes of enforcing this chapter.
3. The City Manager or designee shall keep records of all amendments to the local Water Supply Protection Ordinance and shall provide copies of all amendments upon adoption to the Stormwater Branch of the Division of Energy, Mineral, and Land Resources.
4. The City Manager or designee is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his responsibility the full police power of the City. The City Manager or designee, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this chapter.
5. The City Manager or designee shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted for each calendar year to the Water Quality Section of the Division of Environmental Management on or before January 1st

of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

6. The City Manager or designee is responsible for ensuring that SCM are inspected at least once a year and shall keep a record of SCM inspections.

(Code 1961, § 31A-40)

Sec. 29-122. The Watershed Review Board to Serve as Appeals Board

The Watershed Review Board is designated as the agency to hear and consider appeals of the decision of the City Manager or designee pursuant to this chapter, as prescribed by G.S. 143-214.5.

(Code 1961, § 31A-41)

Sec. 29-123. Appeal from the City Manager or designee

- a. Any order, requirements, decision, or determination made by the City Manager or designee may be appealed to and decided by the Watershed Review Board in accordance with this Article.
- b. An appeal from a decision of the City Manager or designee must be submitted to the Watershed Review Board within 30 calendar days from the date of the order, interpretation, decision, or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the City Manager or designee shall transmit to the Watershed Review Board all papers constituting the record upon which the action appealed from was taken.
- c. An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Watershed Review Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate of approval for recording, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Watershed Review Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.
- d. The Watershed Review Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the appeal within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

(Code 1961, § 31A-42)

Sec. 29-124. Rules of Conduct for Members

- a. No Watershed Review Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested, as defined by Section 2-92 or prohibited by Section 2-94 in the Code of Ordinances of the City of Fayetteville.
- b. No Watershed Review Board member shall discuss any case with any parties thereto prior to the public hearing on that case or with any other member of the Watershed Review Board, its secretary or clerk prior to the hearing. Members of the Watershed Review Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.
- c. Members of the Watershed Review Board shall give notice to the chairman at least forty-eight (48) hours prior to the hearing of any potential conflict of interest which he has in a particular

case before the Watershed Review Board. Failure to give such notice shall result in continuance of such hearing for at least forty-eight (48) hours.

- d. No Watershed Review Board member eligible to vote on any matter that decides an application or appeal unless he has attended the hearing on that application or appeal.

(Code 1961, § 31A-43)

Se. 29-125. Powers and Duties of the Watershed Review Board

- a. Administrative review. The Watershed Review Board shall hear and decide appeals from any decision or determination made by the City Manager or designee in the enforcement of this chapter.
- b. Variances. The Watershed Review Board shall have the power to authorize, in specific cases, variances from the terms of this chapter in accordance with this Article. Major variances may be granted for certain projects; provided, however, the major variance must be reviewed by and receive approval from the North Carolina Environmental Management Commission prior to the Watershed Review Board issuing the Watershed Protection Permit. The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this chapter as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this chapter will result in practical difficulties or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done. In addition, the Watershed Review Board shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

(Code 1961, § 31A-44)

Sec. 29-126. Procedure to Obtain a Variance

- a. Applications for a variance shall be made on the proper form obtainable from the City Manager or designee and shall include the following information:
 - 1. A site plan, drawn to scale of at least one (1) inch to forty (40) feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name, and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.
 - 2. A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Watershed Review Board in considering the application.
 - 3. The City Manager or designee shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the City Manager or designee prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.
- b. Before the Watershed Review Board may grant a variance, it shall make the following findings, which shall be recorded in the permanent record of the case and shall include the factual reasons on which they are based:
 - 1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the chapter. In order to determine that there are practical difficulties or

unnecessary hardships, the Watershed Review Board must find the five following conditions exist:

- a. If the applicant complies with the provisions of this chapter, the applicant can secure no reasonable return from, nor make reasonable use of, the applicant's property. Merely providing that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Watershed Review Board in granting a variance. Moreover, the Watershed Review Board shall consider whether the variance is the minimum possible deviation from the terms of this chapter that will make possible the reasonable use of the applicant's property.
 - b. The hardship results from the application of this chapter to the property rather than from other factors such as deed restrictions or other hardship.
 - c. The hardship is due to the physical nature of the applicant's property, such as its size, shape or topography, which is different from that of neighboring property.
 - d. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates this chapter, or who purchases the property after the effective date of the ordinance from which this chapter is derived, and then comes to the Watershed Review Board for relief.
 - e. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others and would not promote equal justice.
2. The variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.
 3. In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Watershed Review Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.
- c. In granting the variance, the Watershed Review Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this chapter. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.
 - d. The Watershed Review Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.
 - e. A variance issued in accordance with this Section shall be considered a Watershed Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within six (6) months from the date of the decision.
 - f. If the application calls for the granting of a major variance, and if the Watershed Review Board decides in favor of granting the variance, the Watershed Review Board shall prepare a preliminary record of the hearing with all deliberate speed.
 1. The preliminary record of the hearing shall include:
 - a. The variance application;
 - b. The hearing notices;
 - c. The evidence presented;

- d. Motions, offers of proof, objections to evidence, and rulings on them;
 - e. Proposed findings and exceptions;
 - f. The proposed decision, including all conditions proposed to be added to the permit.
- 2. The preliminary record shall be sent to the North Carolina Environmental Management Commission for its review as follows:
 - a. If the North Carolina Environmental Management Commission concludes from the preliminary record that the variance qualifies as a major variance and that (i) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (ii) the variance, if granted, will not result in a serious threat to the water supply, then the North Carolina Environmental Management Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The North Carolina Environmental Management Commission shall prepare a decision and send it to the Watershed Review Board. If the North Carolina Environmental Management Commission approves the variance as proposed, the Watershed Review Board shall prepare a final decision granting the proposed variance. If the North Carolina Environmental Management Commission approves the variance with conditions and stipulations, the Watershed Review Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
 - b. If the North Carolina Environmental Management Commission concludes from the preliminary record that the variance qualifies as a major variance and that (i) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (ii) the variance, if granted, will result in a serious threat to the water supply, then the North Carolina Environmental Management Commission shall deny approval of the variance as proposed, and the North Carolina Environmental Management Commission shall prepare a decision and send it to the Watershed Review Board . The Watershed Review Board shall prepare a final decision denying the variance as proposed.

(Code 1961, § 31A-45)

Sec. 29-127. Appeals from the Watershed Review Board

Appeals from the Watershed Review Board must be filed with the Superior Court within 30 days from the date of the decision. Decisions by the Superior Court will be in the manner of certiorari.
(Code 1961, § 31A-46)

Sec. 29-128 Changes and Amendments to the Water Supply Watershed Protection Ordinance

- a. The City Council may, on its own motion or on petition, after public notice and hearing, amend, supplement, change, or modify the watershed regulations and restrictions as described herein.
- b. No action shall be taken until the proposal has been submitted to the Watershed Review Board for review and recommendations. If no recommendation has been received from the Watershed Review Board within forty-five (45) days after submission of the proposal to the

Chairman of the Watershed Review Board, the City Council may proceed as though a favorable report had been received.

- c. Under no circumstances shall the City Council adopt such amendment, supplements or changes that would cause this ordinance to violate the watershed protection rules as adopted by the North Carolina Environmental Management Commission. All amendments must be filed with the North Carolina Division of Energy, Mineral, and Land Resources.

Sec. 29-129 Public Notice and Hearing Required

Before adopting or amending this ordinance, the City Council shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) nor more than twenty-five (25) days before the date for the hearing.

Secs. 29-130—29-150. Reserved

Article VI. – Definitions

Sec. 29-151. General 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:

Agricultural Use means the use of waters for stock watering, irrigation, and other farm purposes.

Alternative Stormwater Management Systems means systems as specified in the North Carolina Stormwater Best Management Practices Manual. The alternative systems can be used alone or in combination to achieve the required pollutant removal of 85 percent TSS.

Animal Unit means a unit of measurement developed by the United States Environmental Protection Agency that is used to compare different types of animal operations.

Balance of Watershed (BW) means the area adjoining and upstream of the critical area in a WS-II and WS-III water supply watershed. The “balance of the watershed” is comprised of the entire land area contributing surface draining to the stream, river, or reservoir where a water supply intake is located.

Best Management Practices (BMP) means a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Buffer means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

Building means any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building.

Built-Up Area means that portion of a development project that is covered by impervious or partially impervious (does not allow water to infiltrate from surface to subsurface) cover, including buildings, pavement, gravel areas (e.g., roads, parking lots, paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

City means the City of Fayetteville, North Carolina.

City Manager or designee means an official or designated person appointed by the Fayetteville Public Works Commission responsible for the administration and enforcement of this ordinance.

Cluster Development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project, including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential subdivisions and multifamily developments. For the purpose of this chapter, planned unit developments and mixed-use developments are considered as cluster development.

Common Plan of Development means the site where multiple separate and distinct development activities may be taking place at different times or different schedules but governed by a single development plan regardless of ownership of parcels.

Critical Area means the area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed, whichever comes first; or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed, whichever comes first. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

Customary Home Occupations means any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purpose and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes and that not over twenty-five percent (25%) of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site such as a service repair truck, delivery truck, etc.

Development means any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

Discharging Landfill means a facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

Dwelling Unit means a building, or portion thereof, providing complete and permanent living facilities for one or more persons.

Existing Development means those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of the ordinance from which this chapter is derived, based on at least one of the following criteria:

1. Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid Watershed Review Board approval to proceed with the project; or
2. Having an outstanding valid building permit as authorized by the G.S. 160D-102; or
3. Having an approved site specific or phased development plan as authorized by G.S. 160D-102.

An existing development that meets the criteria established in subsections (1), (2), or (3) of this definition shall be vested for a period of five years from the effective date of the ordinance from which this chapter is derived.

Existing Lot (Lot of Record) means a lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter.

Family means one or more persons occupying a single dwelling unit; provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons; but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

Family Subdivision means a subdivision of a tract of land: (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for normal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

Hazardous Material means any substance listed as such in: SARA Section 302, Extremely Hazardous Substances; CERCLA Hazardous Substances; or Section 311 of CWA (oil and hazardous substances).

Industrial Development means any nonresidential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any Hazardous Material for the

purpose of manufacturing, assembling, finishing, cleaning, or developing any product or commodity.

Landfill means a facility for the disposal of solid waste on land in a sanitary manner in accordance with G.S.130A-290 et seq. For the purpose of this chapter this term does not include composting facilities.

Lot means a parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

Major Variance means a variance that is not defined as a Minor Variance as defined by this chapter:

1. The complete waiver of a management requirement;
2. The relaxation, by a factor of more than ten percent, of any management requirement that takes the form of a numerical standard;
3. The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.

Minor Variance means a variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five (5) percent of any buffer, density, or built-upon area requirement upon the high density option; or that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low density option. For variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built-upon area proposed to encroach with the vegetated setback divided by the total area of vegetated setback within the project.

Nonconforming Lot of Record means a lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations (or their amendments) that does not meet the minimum lot size or other developmental requirements of the statewide watershed protection rules.

Nonresidential Development means all development other than residential development, agriculture, and silviculture.

Plat means a map or plan of a parcel of land which is to be, or has been subdivided.

Protected Area means the area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within 10 miles upstream and draining to the intake located directly in the stream or river to the ridgeline of the watershed.

Qualified Individual means a person certified to perform stream determinations by completing and passing the Surface Water Identification Training and Certification (SWITC) course offered by the N.C. Div. of Water Resources at N.C. State University.

Residential Development means buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc., and their associated outbuildings such as garages, storage buildings, gazebos, etc., and customary home occupations.

Residuals means any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant, or air pollution control facility permitted under the authority of the Environmental Management Commission.

Single-Family Residential means any development where: (i) no building contains more than one dwelling unit, (ii) every dwelling unit is on a separate lot, and (iii) where no lot contains more than one dwelling unit.

Stormwater Control Measure (SCM) means a permanent structural divide that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrological cycle by promoting infiltration evapotranspiration, post-filtration discharge, reuse of stormwater, or a combination thereof.

Street (Road) means a right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure means anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

Subdivider means any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development, whether immediate or future, and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this chapter:

1. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this chapter;
2. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
3. The public acquisition by purchase of strips of land for the widening or opening of streets;
4. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this chapter;
5. The division of a tract into plots or lots used as a cemetery;
6. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the North Carolina General Statutes.

Surface Waters means all waters of the State as defined in G.S. 143-212 except underground waters.

Toxic Substance means any substance or combination of substances, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions or suppression in reproduction or growth, or physical deformities in such organisms or their offspring or other adverse health effects.

Variance means a permission to develop or use property granted by the Watershed Review Board City Manager or designee relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this chapter.

Vested Right means the right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan or an approved phased development plan.

Water Dependent Structure means any structure for which the use requires access to or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots, and commercial boat storage areas are not water dependent structures.

Watershed means the entire land area contributing surface drainage to a specific point (e.g., the water supply intake) or alternatively, the geographic region within which water drains to a particular river, stream, or body of water.

Watershed Review Board means the Fayetteville Public Works Commission, acting via the voting members of the Commission's board of Commissioners.
Cross reference— Definitions generally, § 1-2.

Sec. 29-152. Word Interpretation

For the purposes of this chapter, certain words shall be interpreted as follows:

- a. Words in the present include the future tense.
- b. Words used in the singular number include the plural, and words used on the plural number include singular, unless the natural construction of the wording indicates otherwise.
- c. The word "person" includes a firm, association, corporation, trust, and company as well as an individual.
- d. The word "structure" shall include the word "building."
- e. The word "lot" shall include the words "plot," "parcel," or "tract."
- f. The word "shall" is always mandatory and not merely directory.
- g. The word "will" is always mandatory and not merely directory.

Secs. 29-153—29-180. Reserved

Article VII. - High Density Requirements

Sec. 29-181. High Density Development Permit Application

- a. A high density development permit shall be required for new development exceeding the requirements of the low density option.
- b. Application for a high density development permit shall be addressed and submitted to the Watershed Review Board through the City Manager or designee. Application for a high density development permit shall be made on the proper form and shall include the following information:
 1. A completed high density development permit signed by the owner of the property. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization;
 2. Two reproducible copies of the development plan within the drainage basin including the applicable information listed: application forms, subdivision plat checklist and detailed concerning built-upon area;
 3. Two reproducible copies of the plans and specifications of the stormwater control structure consistent with Section 29-182
 4. When required by law, written verification that a soil erosion and sedimentation control plan has been approved by the appropriate state or local agency;
 5. Permit application fees consistent with Section 29-185
- c. Prior to taking final action on any application, the Watershed Review Board or City Manager or designee may provide an opportunity to public agencies affected by the development proposal to review and make recommendations on the application. However, failure of the agencies to submit their comments and recommendations shall not delay the Watershed Review Board's action within the prescribed time limit.
- d. The Watershed Review Board shall either approve or disapprove each application for a high density development permit based on the applicable criteria contained in this chapter. First consideration of a completed application shall be at the next regularly scheduled meeting of the Watershed Review Board following the tenth (10th) day after the Watershed Review Board's receipt of the completed application. The Watershed Review Board shall take action on the completed application at its first consideration or within 65 days of its first consideration.
 1. If the Watershed Review Board approves the application based on its findings, such approval shall be indicated on the permit and both copies of the site plan and both copies of the plans and specifications of the stormwater control structure. A high density development permit shall be issued after the applicant posts a performance bond or other acceptable security as required in subsection 29-183(b)(1) and executes an operation and maintenance agreement as required in subsection 29-183(d). A copy of the permit and one copy of each set of plans shall be kept on file at the City Manager or designee's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or by registered mail, return receipt requested.
 2. If the Watershed Review Board disapproves the application based on its findings, the reasons for such action shall be stated in the minutes of the Watershed Review Board and presented to the applicant in writing either by personal service or registered mail, return receipt requested. The applicant may make changes and submit a revised plan. All revisions shall be submitted, reviewed, and acted upon by the Watershed Review Board pursuant to the procedures of this Section.

- e. In addition to any other requirements provided by this chapter, the Watershed Review Board may designate additional permit conditions and requirements to ensure that the use will be harmonious with the area in which it is proposed to be located and with the spirit of this chapter. All additional conditions shall be entered in the minutes of the meeting at which the permit is granted, on all plans and on the permit certificate. All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heirs, successors or assigns during the continuation of the permitted use.

(Code 1961, § 31A-61; Ord. No. S2008-004, § 2, 1-28-2008)

Sec. 29-182 Engineered Stormwater Controls; Specific Requirements to Exercise the High Density Option

- a. All stormwater control structures shall be designed by a state registered professional engineer. Other stormwater systems shall be designed by a state registered professional with qualifications for the type of system required; these registered professionals are defined as professional engineers and land surveyors to the extent that the design represents incidental drainage within a subdivision, as provided in G.S. 89C-3(7).
 - b. All stormwater controls shall use wet detention ponds as a primary treatment system unless alternative stormwater management measures, as outlined in North Carolina Stormwater Best Management Practices Manual, are used. Wet detention ponds shall be designed for specific pollutant removal according to modeling techniques approved by the state Division of Environmental Management. Specific requirements for these systems shall be in accordance with the following design criteria:
 - 1. Permanent pool storage designed for total suspended solid removal of 85 percent and storage runoff from a one-inch rainfall in the Protected Area (WS-IV-PA) and one and one half inch rainfall in the Critical Area (WS-IV-CA) from the area above the permanent pool.
 - 2. Designed runoff storage volume shall be above the permanent pool.
 - 3. The discharge rate from these systems following the one-inch rainfall in the Protected Area (WS-IV-PA) and one and one half inch rainfall in the Critical Area (WS-IV-CA) shall be such that the runoff does not draw down to the permanent pool level in less than two days and that the pond is drawn down to the permanent pool level within at least five days.
 - 4. Permanent pool with a mean depth of three feet.
 - 5. The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features.
 - 6. Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least 30 feet in length. The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow through the filter for a ten-year, 24-hour storm with a ten-year, one-hour intensity with a slope of five percent or less. Vegetation in the filter shall be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics.
 - 7. In addition to the vegetative filters required in subsection (b)(6) of this Section, all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within 30 days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in subsection 29-183(d).

8. Shoreline side slope range three-foot horizontal to one-foot vertical or comparable design and effect.
 9. Pool length to width ratio of three to one (3:1) or comparable design and effect.
 10. Shoreline vegetation plan.
 11. Maintenance access shall be shown on site plan.
 12. Sediment disposal area shall be shown on site plan or, if off-site disposal to be used, a separate site plan shall be submitted.
 13. A description of the area containing the stormwater control structure shall be prepared and filed consistent with subsections 29-186a) and (b) as a separate deed with the county register of deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the detention pond, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.
 14. The stormwater structure's perimeter shall be fenced except when alternatives to wet detention are used.
- b. Alternative stormwater management systems, as referenced in the North Carolina Stormwater Best Management Practices Manual, consisting of one treatment option or a combination of treatment options, may be used. The design criteria for approval shall be 85 percent average annual removal of total suspended solids. Also, the discharge rate shall meet one of the following criteria:
1. The discharge rate following the one-inch storm in the Protected Area (WS-IV-PA) and one and one half inch storm in the Critical Area (WS-IV-CA) shall be such as that the runoff draws down to the pre- storm design within five days, but not less than two days; and
 2. The post development peak discharge rate shall not exceed the pre-development rate for the one-year, 24- hour storm.

(Code 1961, § 31A-62; Ord. No. 2008-004, § 3, 1-28-2008)

Sec. 29-183 Posting of Financial Security Required

- a. *Generally*, all new stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs or reconstruction necessary for adequate performance of the stormwater control structures.
- b. *Form of financial assurance*. Financial assurance shall be in the form of the following:
 1. *Security performance bond or other security*. The permit applicant shall obtain adequate security as set forth in this Section in the form of (i) a performance bond from a surety bonding company authorized to do business in the state, or (ii) other instrument readily convertible into cash at face value payable to the City or placed in escrow with a financial institution designated as an official depository of the City. Adequate security shall mean a bond or other instrument in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated by the applicant and approved by the Watershed Review Board. The total cost of the stormwater control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and grading, excavation, fill, etc. The costs shall be prorated as part of a larger project, but rather under the assumption of an independent mobilization; or

2. Operation and maintenance financial security deposit equal to 80 percent of total construction cost.
- c. *Operation and maintenance agreement.* Consistent with Section 29-181 the permit applicant shall enter into a binding operation and maintenance agreement between the City and all interests in the development. Such agreement shall require the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operation and management plan or manual provided by the developer. The operation and maintenance agreement shall be filed with the county Register of Deeds by the applicant within five working days of approval.
- d. *Default/failure to complete.* Upon default of the permit applicant to complete and/or maintain the stormwater control structure as spelled out in the performance bond or other security the City may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The City shall return any funds not spent in completing the improvements to the owning entity.
- e. *Default under the cash security.* Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operations and maintenance agreement, the City shall obtain and use all or any portion of the cash security to make the necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the operations and maintenance agreement. The City shall not return any of the deposited cash funds.
- f. *Default under the performance bond or security.* Upon default of the permit applicant to complete the stormwater control structure as spelled out in the performance bond or other security, the City may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The City shall return any funds not spent in completing the improvements to the owning entity.

(Code 1961, § 31A-63)

Sec. 29-184 Maintenance and Upkeep

- a. An operation and maintenance plan or manual shall be provided by the developer for each stormwater control structure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and, consistent with the operation and maintenance agreement, who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a stormwater control structure to design specifications if a failure occurs.
- b. Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfacing with any easement or access to the stormwater control structure.
- c. Except for general landscaping and grounds management the owning entity shall notify the City Manager or designee prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, City Manager or designee shall inspect the completed improvements and shall inform the owning entity of any required additions, changes, or modifications and of the time period to complete such improvements. The City

Manager or designee may consult with an engineer designated by the Watershed Review Board.

- d. Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual may not be implemented until such amendments are approved by the Watershed Review Board. Proposed changes shall be prepared by a state registered professional engineer and submitted to and reviewed by the City Manager or designee prior to consideration by the Watershed Review Board.
 - 1. If the Watershed Review Board approves the changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the office of the City Manager or designee.
 - 2. If the Watershed Review Board disapproves the changes, the proposal may be revised and resubmitted to the Watershed Review Board as a new proposal. If the proposal has not been already reviewed, it shall be returned to the applicant.
- e. If the Watershed Review Board finds that the operation and maintenance plan or manual is inadequate for any reason, the Watershed Review Board shall notify the owning entity of any required changes and shall prepare and file copies of the review agreement with the county Register of Deeds, the office of the City Manager or designee and the owning entity.

(Code 1961, § 31A-64)

Sec. 29-185 Application and Inspection Fees

- a. Processing and inspection fees shall be submitted in the form of a check or money order made payable to the City. Applications shall be returned if not accompanied by the required fee.
- b. A permit and inspection fee schedule, as approved by the Watershed Review Board, shall be posted in the office of the City Manager or designee r.
- c. Inspection fees shall be valid for 60 days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with subsections 29-184(c) or (d), except in the case when a similar fee has been paid within the last 60 days.

Sec. 29-186 Inspections and Release of the Performance Bond

- a. The stormwater control structure shall be inspected by the City Manager or designee, after the owning entity notifies the City Manager or designee that all work has been completed. At this inspection, the owning entity shall provide:
 - 1. The signed deed, related easements and survey plat for the stormwater control structure ready for filing with the county Register of Deeds.
 - 2. A certification sealed by an engineer stating that the stormwater control structure is complete and consistent with the approved plans and specifications.
- b. The City Manager or designee shall present the materials submitted by the developer and the inspection report and recommendations to the Watershed Review Board at its next regularly scheduled meeting.
 - 1. If the Watershed Review Board approves the inspection report and accepts the certification, deed and easements, the City Manager or designee shall file the deed and easements with the county Register of Deeds, the City shall release up to 45 percent of the value of the performance bond or other security, and the Watershed Review Board shall issue a Watershed Protection Occupancy Permit for the stormwater control structure, consistent with Section 29- 73

2. If deficiencies are found, the Watershed Review Board shall direct that improvements and inspections be made and/or documents corrected and resubmitted to the Watershed Review Board.
- c. No sooner than one year after the filing date of the deed, easements and maintenance agreement, the developer may petition the Watershed Review Board to notify the City to release the remaining value of the performance bond or other security. Upon receipt of such petition, the City Manager or designee shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The City Manager or designee shall present the petition, inspection report and recommendations to the Watershed Review Board.
 1. If the Watershed Review Board approves the report and accepts the petition, the City may release the performance bond or other security upon execution by the developer of an indemnification agreement in favor of the City which shall be a covenant upon the property and run with the land.
 2. If the Watershed Review Board does not accept the report and rejects the petition, the Watershed Review Board shall provide the developer with instruction to correct any deficiencies and all steps necessary for the release of the performance bond or other security.
- d. Options I and II.
 1. A Watershed Protection Occupancy Permit shall not be issued for any building within the permitted development until the Watershed Review Board has approved the stormwater control structure, as approved in subsection (b) of this Section.
 2. All stormwater control structures shall be inspected at least on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the state division of environmental management. Annual inspection shall begin within one year of filing date of the deed for the stormwater control structure.
 3. In the event the City Manager or designee discovers the need for corrective action or improvements, the City Manager or designee shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the City Manager or designee shall inspect and approve the completed improvements. The City Manager or designee may consult with an engineer or landscape architect, to the extent that G.S. 89A-1 et seq. allows, designated by the Watershed Review Board.
 4. Appeals of any order, requirement, decision or determination made by the City Manager or designee may be made to and decided by the Watershed Review Board consistent with Sections 29-122 and 29-123.

(Code 1961, § 31A-66)

Sec. 29-187. Delegation of Authority to City Manager or designee

The Watershed Review Board may authorize the City Manager or designee to act on behalf of it.

(Code 1961, § 31A-68)

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the _____ day of _____, 2022.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk