



City of Graham Planning Board

Meeting Agenda

November 16, 2021, at 6:30 PM
Council Chambers, Graham City Hall

1. Meeting called to order.
2. Roll Call and confirmation of quorum.
3. Pledge of allegiance and moment of silence or invocation.
4. Overview of board and general meeting rules.
5. Approval of the October 19, 2021, meeting minutes.
6. New Business:
 - a. Request by Maple View, Inc. to rezone 5.11 acres at 1205 E. Harden Street (GPIN: 8883990211) from R-18 (Low-Density Residential) to I-1 (Light Industrial) (RZ2107).
 - b. Amendments to Sections 10.135-10.149 to re-classify existing permitted uses and make uniform changes to the code impacted by the reclassifications (AM2103).
 - c. Various amendments to the Development Ordinance to comply with SB300 redefining how and when criminal and civil penalties apply (AM2104).
7. Public comment on non-agenda items.
8. Adjournment.



Application for REZONING or CONDITIONAL REZONING

P.O. Drawer 357
201 South Main Street
Graham, NC 27253
(336) 570-6705
Fax (336) 570-6703
www.cityofgraham.com

This application is for both general district rezonings and conditional rezonings. Applications are due on the 25th of each month. Applicants are encouraged to consult with the *City of Graham Development Ordinances* and the City Planner.

Site

Street Address: 1205 East. Harden Street
Tax Map#: 6-23-12 GPIN: 8883990211
Current Zoning District(s):
 R-7 R-9 R-12 R-15 R-18
 R-MF R-G C-R C-MXR
 B-1 B-2 B-3 C-B C-MXC
 O-I C-O-I I-1 I-2 C-I
Overlay District, if applicable:
 Historic S Main St/Hwy 87 E Harden St/Hwy 54
Current Use: Undeveloped
Total Site Acres: 5.11 acres
Property Owner: Maple View, Inc.
Mailing Address: 1648 Memorial Drive
City, State, Zip: Burlington, NC 27215

Proposed Rezoning or Conditional Rezoning

Proposed Zoning District(s):
 R-7 R-9 R-12 R-15 R-18
 R-MF R-G C-R C-MXR
 B-1 B-2 B-3 C-B C-MXC
 O-I C-O-I I-1 I-2 C-I

Describe the purpose of this rezoning request. *For Conditional Rezoning*s, also specify the actual use(s) intended for the property (from Sec. 10.135 Table of Permitted Uses) along with other descriptive or pertinent information, such as number of dwelling units, type of multifamily development, square footage and number of buildings:

Request zoning change from R-18 to I-1.

Applicant

Property Owner Other _____

Application for Conditional Rezoning may only be initiated by the owner of a legal interest in all affected property, any person having an interest in the property by reason of written contract with owner, or an agent authorized in writing to act on the owner's behalf. If the applicant for Conditional Rezoning is other than the Property Owner, documentation in compliance with the preceding statement must be provided in order for this application to be complete.

Name: CTS Maple View, Inc.
Mailing Address: 1648 Memorial Dr.
City, State, Zip: Burlington, NC 27215
Phone #: 336-229-9464
Email: ctsharp@gmail.com +
jmralley@gmail.com

I have completed this application truthfully and to the best of my ability.

CTS 10-20-2021
Signature of Applicant Date

For Conditional Rezoning, this application must be accompanied by a Preliminary Site Plan and supporting information specifying the actual use(s) and any rules, regulations or conditions that, in addition to predetermined ordinance requirements, will govern the development and use of the property.

Site Plan Review Application **must be attached** to this application for Conditional Rezoning

Office Use Only. DEVID#



STAFF REPORT

Prepared by Justin Snyder, AICP, CZO, Planning Director

East Harden Industrial (RZ2107)

Type of Request: Rezoning

Meeting Dates

Planning Board on November 16, 2021

City Council on December 14, 2021

Contact Information

Chad Sharpe

1648 Memorial Dr.

Burlington, NC 27215

336-229-9464; ctsharpe@gmail.com

Summary

This is a request to rezone 5.11 acres of property from R-18 (low density residential) to I-1 (light industrial). While this side of the road is primarily residential, there is some O-I and B-2 zoning in close proximity, as well as I-1 industrial zoning immediately across the street. This property is also located in the Highway 54 overlay, so additional development control measures as well as use limitations pursuant to Section 10.465 of the development ordinance would apply for this property.



Disclaimer:
This map was compiled from the GIS resources of the Burlington Regional GIS Partnership for public planning and agency support purposes. These resources include public information sources of Minnetrust, Inc., ortho, defensible and accuracy, which aspects provide horizontal accuracy as presented together on the map. Neither the City of Graham nor the Partnership shall be held liable for any errors in the map or reporting data. If any public information source from which this map was compiled, is inconsistent with the US survey when required, in the course of the verification of the information contained within this map.

Location

1205 East Harden Street

GPIN:

8883990211

Current Zoning

R-18 Residential low density

Proposed Zoning

I-1 Light Industrial

Overlay District

Highway 54 Overlay

Surrounding Zoning

R-MF, R-18, I-1, B-2, O-I

Surrounding Land Uses

Single Family, Multi Family, Vacant, and Business

Size

5.11 acres

Public Water & Sewer

Yes

Floodplain

Yes

Staff Recommendation

Approval

Conformity to the *Graham 2035 Comprehensive Plan (GCP)* and Other Adopted Plans

Applicable Policies:

- **2.1.1 Diverse job market.** A diversified job market that provides employment opportunities for persons with varying education levels and skill sets is needed and encouraged. *This amendment will allow for potential job creation that will diversify our existing workforce.*
- **2.1.4 Competitive advantage.** Graham works to strengthen its existing comparative economic advantages including a high quality and highly diverse workforce, local education and research institutions, and high quality of life. *This amendment will strengthen the local economy by increasing the tax base with minimal impact to existing public infrastructure. It will aid in diversifying our skilled labor workforce.*
- **2.2.2 Living wages.** Promote the creation of living wage jobs, and promote living wages when considering economic development incentives and investments. Expand living wage opportunities for people without 4-year college degrees. *This amendment will likely attract business with a skilled workforce that may not necessarily be college educated or which may trend towards community colleges and functional programs.*
- **3.2.4 Greenway system.** Promote a greenway system that links together the City's recreational resources and provides connections to commercial, employment, and residential areas. Greenways along stream buffers should be prioritized in order to protect the stream watershed. *This parcel is located along a mapped stream, and by clustering the development and impervious areas to the front of the property, the rear stream buffer areas can be retained as natural open space with potential for trails or access easements for the public.*
- **4.3.1 Land use patterns.** Promote development of efficient land use patterns to allow continued quality and efficiency of water systems. Discourage the extension of water service into areas that are not most suitable for development. *The use of this parcel for light industrial will allow more efficient use of the existing water and sewer lines, without an additional maintenance burden.*

Planning Type

Corridor

Development Type

Commercial Corridor

Ideally, most future development will be focused in strategically located clusters identified within this plan. Where commercial growth occurs along the identified NC 54 and NC 87 corridors, pedestrian, bicycle, and vehicular safety should be promoted through high quality planned development.

Corridors serve as connections between important places and along highly trafficked roads. But in this plan corridors do not simply plan for street maintenance. Instead corridors represent a network of travel routes, increase choices for people to move throughout the City, reducing automobile dependency, providing a link to parks and open space, and overall enhancing travel within Graham.

Appropriate Density

6 dwelling units per acre;
0.5 Commercial/Industrial FAR

Staff Recommendation

Based on the *Graham 2035 Comprehensive Plan* and the *City of Graham Development Ordinance*, staff recommends **approval** of the rezoning. The following supports this recommendation:

- Rezoning this property would further Policies 2.1.1, 2.1.4, 2.2.2, 3.2.4, and 4.2.1, creating a diverse job market with living wages to increase our competitive advantage while encouraging efficient land use patterns and environmentally sensitive development to possibly extend our greenway system.

RZ2107 R-18 to I-1



City of Graham

Legend

Downtown Historic District

Zoning Districts

- R-18
- R-15
- R-12
- R-9
- R-7
- C-R
- R-MF
- R-G
- O-I
- C-O-I
- B-3
- B-2
- B-1
- C-B
- I-1
- I-2
- C-I
- C-MXR
- C-MXC

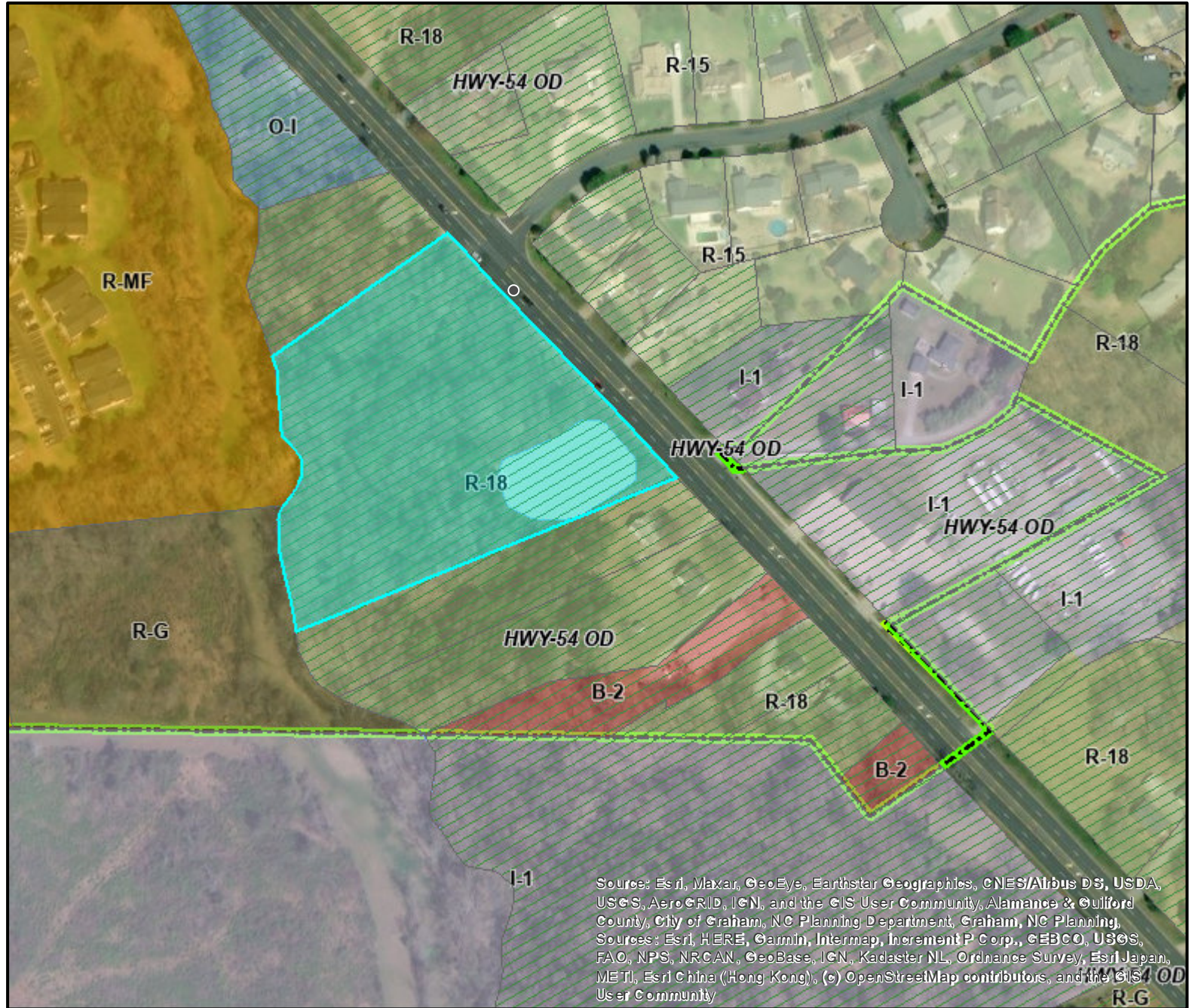
Zoning Overlay Districts

- HD
- PUD
- HWY-87 OD
- HWY-54 OD



1 inch = 264 feet

Print Date: 10/20/2021



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Alamance & Guilford County, City of Graham, NC Planning Department, Graham, NC Planning, Sources: Esri, HERE, Garmin, Intermap, Increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

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STAFF REPORT

Prepared by Justin Snyder, Planning Director

Text Amendment for: Special Use Permits Uses Listed

Type of Request: Text Amendment

Meeting Dates

Planning Board on November 16, 2021

City Council on December 14, 2021

Contact Information

N/A

Summary

In keeping with the recent recommendation to move the authority for special use permit approvals from the City Council to the Board of Adjustment, staff has also identified several uses in the permitted uses table that are improperly classified based on type and intensity

of use. This not only includes uses subject to the special use permit process, but also several uses by right. Staff has made several adjustments to the existing permitted uses table to better classify the uses. Additionally, because some of the proposed changes affect the notes to the permitted uses table and the special uses sections of the code, those changes were made as well. Due to the length of those changes, staff has included them as an addendum at the end of this report.

<u>Project Name</u>
Special Use Permits Uses Listed (AM2103)
<u>Location</u>
city-wide
<u>Current Zoning</u>
not applicable
<u>Proposed Zoning</u>
not applicable
<u>Overlay District</u>
not applicable
<u>Staff Recommendation</u>
Approval

Existing Language:



Existing Text

Section 10.135

Table of Permitted Uses

Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC
ABC Store (liquor)												X	X	C					C	3
Accessory Uses, See Note 1	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3
Office Space, Less than 5 employees									X	C	X	X	X	C	X			C	C	3
Office Space, More than 5 employees									X	C		X	X	C				C	C	3
Alteration, Clothing Repair											X	X	X	C				C	C	3
Ambulance, Fire, Police, Rescue Station	S	S	S	S	S	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3
Amusement/Water Parks/Fairs/Carnivals												S			S	S	C			4
Animal Hospital/Commercial, with outdoor kennels or runs, provided all runs and pens are at least 50 ft. from any property line												S		C	X	X	C		C	3
Boutique Shops, No Outdoor Storage									S	C	X	X	X	C	X			C	C	3
Large Items Store (appliances, hardware, furniture)												X	X	C	X		C		C	3
Athletic Fields, See Note 2	S	S	S	S	S	C	S	S	X	C	X	X		C	X	X	C	C	C	1
Auditoriums, Stadiums, and similar facilities where admission is charged or organized athletic events are held, See Note 2							S	S	S			S	S	C	S		C		C	4
Vehicle Accessory and Supply Sales												X		C	X		C	C	C	3
Vehicle assembling, painting, upholstering, rebuilding, reconditioning; body and fender work															X	X	C			4
Vehicle body and fender repair conducted within completely enclosed building												X		C	X	X	C		C	3
Vehicle Dealers/Rentals (new and used)												X		C	X	X	C		C	3
Vehicle repair shops, not including body or fender repair												X		C	X	X	C		C	4



Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC
Vehicle Towing Services, See Note 3												X		C	X	X	C			4
Bank, Savings and Loan, Credit Union, similar financial institutions									X	C	X	X	X	C	X	X	C	C	C	2
Banquet Hall						C			X	C		X	X	C	X		C	C	C	3
Bars (as principal use), See Note 4												X	X	C			C	C	C	3
Barber Shop, Beauty Shop, Nail Salon											X	X	X	C	X		C	C	C	3
Batting Cages, Outdoor, See Note 5															X	X	C			4
Bed and Breakfast (Tourist Home)	S	S	S	X	X	C	X	X	X	C	X	X	X	C				C	C	2
Billiard Halls, Bingo Games, Bowling Alleys, other public amusement establishments												X	X	C	X		C		C	3
Shops or Bulk Sales (with storage yard), See Note 6															X	X	C			4
Distribution Center															X	X	C			3
Bus station												S		C						3
Cabinet, woodworking and upholstery shops												X		C	X	X	C		C	3
Campgrounds, commercial												S			S	S	C			4
Car Wash, including Self Service, See Note 7											S	X	X	C	X	X	C		C	4
Cellular or Digital Communication Tower															S	S	C			5
Cemetery or Mausoleum. See Note 8	S							S				S		C	S	S	C			2
Religious Services	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X		C	C	C	2
Communication or Broadcasting Facility, without Tower											X	X	X	C	X	X	C		C	3
Community Centers, not including gymnasiums or stadiums	S	S	S	S	S	C	S	S	S	C	S	S	S	C	S	S	C	C	C	3
Contractors Offices, no outdoor storage									X		X	X	X	C	X	X	C		C	3
Convenience Store (with gasoline pumps >15' from property line)											X	X		C	X	X	C	C	C	3
Convenience Store (without gasoline pumps)									X		X	X	X	C	X	X	C	C	C	3



Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC
Day Care Center, Adult (Less than 6)							X	X	X	C	X	X		C	X		C	C	C	2
Day Care Center, Adult (6 or more)									X	C	X	X		C	X		C		C	2
Day Care Center, Child meeting licensing and safety standards							X	X	X	C	X	X		C	X		C	C	C	2
Day Care Center, Child, operated as home occupation (5 or less), See note 20	X	X	X	X	X	C	X	X	X	C	X	X		C	X			C	C	2
Dwelling, Duplex					X		X	X												1
Dwelling, condominium			S	S	S	C	X	X		C				C				C	C	2
Dwelling(s), located in the second or higher story of a commercial structure									X	C	X	X	X	C				C	C	1
Dwelling, Multifamily , site plan required see Note 18						C	X	X		C				C				C	C	3
Dwelling quarters for operators, caretakers, etc. in or adjacent to buildings primarily for nonresidential use									X	C	X	X	X	C	X	X	C	C	C	3
Dwelling, Single Family Detached	X	X	X	X	X	C	X	X	X	C	X	X		C				C	C	1
Dwelling, Townhouse			S	S	S	C	X	X										C	C	2
Dry cleaning\Laundry (not self-service)												X		C	X	X	C	C	C	3
Electronic, Internet or Sweepstakes Gaming												S			S					5
Equipment Rental, Leasing or Repair (no outside storage)												X		C	X	X	C		C	3
Equipment Rental, Leasing or Repair (with outside storage), See Note 6															X	X	C			5
Explosives storage, long-term or temporary, in accordance with latest edition of National Fire Code																S				3
Family Care Facility (Family Care Home), See Note 21	X	X	X	X	X	C	X	X												1
Farms	X																			1
Farmer's Market (as Accessory Use, See Note 22)											X	X	X							



Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC	
Food processing wholesale quantities, excluding slaughtering															X	X	C			4	
Flea Market, provide no permanent outdoor display and all sale items and temporary signs are placed inside the permanent building on premises after 6:00 p.m.												S			S	S				3	
Floor Covering, Drapery or Upholstery Sales											S	X	X	C	X		C		C	3	
Florist											X	X	X	C				C	C	3	
Funeral Home or Crematorium									X	C	X	X	X	C	X		C	C	C	2	
Game Room, Video Game Room, Coin Operated Amusements												X	X	C					C	3	
Garden Center or Retail Nursery							S	S				X		C	X	X	C		C	3	
Golf Course, Miniature												X		C	X		C			3	
Golf, swimming or tennis lodge or clubs	S	S	S	S	S	C	S	S	S			S		C	S	S	C	C	C	1	
Government Office									X	C	X	X	X	C	X	X	C	C	C	2	
Group Care Facility, See Note 23						C	S	S	S	C	S	S		C				C	C	3	
Group Home, See Note 23	S	S	S	S	S	C	S	S	S	C	S	S		C				C	C	1	
Hazardous Waste Facilities																				5	
Home Occupation	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	1
Hospital	S	S	S	S	S	C	S	S	S	C	S	X		C	S	X	C	C	C	4	
Hotel, Motel or Executive Suites												X	X	C	X		C		C	4	
Jails									S			S			S	S				4	
Junkyards, Salvage Yards																S				5	
Laboratories for testing and research												X		C	X	X	C		C	3	
Landfill, for Household and Commercial Waste, State Permitted – No Hazardous Waste (Reserved)																				5	
Retail/Service With Outside Plant/Equipment Storage												X		C	X	X	C		C	3	



Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC
Laundromat, Coin-Operated											X	X	X	C	X	X	C	C	C	3
Library, Art Gallery or Museum									X	C	X	X	X	C				C	C	2
Life Counseling						C			X	C		X	X	C			C	C	C	2
Manufactured Dwelling Park								S												3
Manufactured Dwelling (Class AA) on Individual Lot								X												1
Manufactured Home Sales												S			S	S				3
Manufacturing and Industry (assembling, manufacturing, compounding, repair or treatment of articles or merchandise)																				
Ammunition, Small Arms																X				4
Animal Feeds																S				5
Apparel and Finished Fabric Products															X	X	C			4
Bakery Products															X	X	C			4
Batteries																X				4
Bottling Plant															X	X	C			4
Cement, concrete, lime, plaster, brick																X				4
Chemicals, Paints and Allied Products																X				4
Dairy Product Processing															X	X	C			4
Electrical Equipment															X	X	C			4
Fabricated Metal Products															X	X				4
Glass Products from Purchased Glass															X	X	C			4
Heating Equipment and Plumbing Fixtures															X	X	C			4
Household Appliances															X	X	C			4
Industrial and Commercial Machinery															S	X	C			4
Leather Products (no tanning)															X	X	C			4
Lighting and Wiring Equipment															X	X	C			4



Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC
Manufactured Housing and Wood Buildings															X	X	C			4
Medical, Dental and Surgical Equipment															X	X	C			4
Millwork, Plywood and Veneer															X	X	C			4
Optical Goods												X		C	X	X	C			4
Paperboard Containers and Boxes																X				4
Pharmaceutical Products															X	X	C			4
Photographic Equipment and Supplies															X	X	C			4
Plastic Products															X	X	C			4
Pottery and Related Products															X	X	C			4
Rubber Products																X				4
Sawmill																S				
Sign manufacture, fabricating												X		C	X	X	C			4
Soaps and Cosmetics																X				4
Textile Products (no dyeing and finishing)															X	X	C			4
Textile Products (with dyeing and finishing)																X				4
Massage Therapy, practitioner licensed by the State of NC									X	C	X	X	X	C	X		C	C	C	2
Medical, Dental or Related Office									X	C	X	X	X	C	X		C	C	C	2
Medical or Dental Laboratory									X	C		X	X	C	X		C	C	C	3
Motion Picture Production												X		C	X		C			4
Municipal Facilities	S	S	S	S	S	C	S	S	X	C	X	X	X	C	S	S	C	C	C	3
Museum or Art Gallery									X	C	X	X	X	C				C	C	2
Night clubs, dance halls (see note 4)												X	X	C			C		C	3
Nursing Home, Rest Home, Convalescent Home	S	S	S	S	S	C	X	X	S	C	S	X		C				C	C	3
Park, Public	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3



Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC
Parking lots serving uses permitted in the district where located, See Note 11	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3
Parking lots or access driveways serving uses not permitted in district where lot is located			S	S	S	C		S	S	C	S	S	S	C	S	S	C	C	C	4
Pet Store/Grooming No Outside Animal Storage/Care												X	X	C	X		C		C	3
Petroleum and Petroleum Products Storage/Sales, <100,000 gallons												S		C	X	X	C			4
Petroleum and Petroleum Products Storage/Sales, >100,000 gallons																X				5
Photography Studio											X	X	X	C	X		C	C	C	3
Physical Fitness Center, Health Club, Gym									X	C		X	X	C	X		C	C	C	3
Planned Unit Development (PUD)	O	O	O	O	O		O	O	O		O	O	O		O	O				3
Post Office											X	X	X	C	X		C	C	C	4
Printing and Publishing Operation/Photocopying												X	X	C	X	X	C		C	3
Public utility warehouses, storage yards, repair areas															X	X	C			4
Racetracks for automobiles, motorcycles															S	S				5
Radio, Television Stations without Towers											X	X	X	C	X	X	C		C	3
Recycling Facility, Commercial															S	S				4
Restaurant (with drive-thru)												X		C	X	X	C		C	3
Restaurant (without drive-thru)												X	X	C	X		C		C	3
Retail Sales No Outside Storage or Sales											S	X	X	C	X		C	C	C	3
Roadside stands, temporary, for sale of agricultural products produced on premises; not in right-of-way									X	X	C	X	X	C	X	X	C	C	C	1
Sewage Treatment Plant,																X				5
School, Elementary or Secondary	S	S	S	S	S	C	S	S	S	C	S	X		C				C	C	1



Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC
School, commercial, vocational									S	C	S	X	X	C	X	X	C	C	C	1
School, music, art, martial arts, or dancing											X	X	X	C	X		C	C	C	1
Septic Tank Installation and Servicing Businesses															X	X	C			3
Sexually Oriented Business												S			S					5
Shooting Range, Indoor															X	X	C			3
Shooting Range, Outdoor																S				4
Solar Farm (See Note 24)						C				C				C	X	X	C	C	C	2
Stable, including riding facilities	S														S	S	C			1
Storage Yard, See Note 13															X	X	C			5
Tanning Salon									X	C		X	X	C				C	C	3
Tattoo Business												X			X	X				3
Taxidermist												X		C	X		C		C	3
Temporary Construction or Real Estate Office, Storage Facilities – use to be terminated upon completion of construction	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	n/a
Theater (indoor)												X	X	C	X		C	C	C	3
Tire Recapping and Retreading (Principal use)															X	X	C			3
Tire Sales												X		C	X		C		C	3
Towers, Radio, Television, Cellular and Digital Communication															S	S	C			5
Truck and Utility Trailer Rental and Leasing												X		C	X	X	C			4
Trucking or Freight Terminal, Storage, Repair, Wash, or Stop															S	S	C			4
Unattended facilities for public utilities, See Note 16	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	2
Utility building sales, sales of storage sheds and trailers												X			X	X	C			
Unified Business Development, Heavy									S	C		S	S	C	S		C	C	C	3



Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC
Unified Business Development, Light									X	C		X	X	C	X		C	C	C	3
Utility Substation, See Note 17	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	2
Veterinary Service, Large Animal	X																			2
Warehouse (general storage, enclosed, non-hazardous)															X	X	C			4
Warehouse, Mini (self-storage)												S		C	X	X	C			3
Waste Incinerators (including Medical)																				5
Water Treatment Plant															X	X	C			5
Wholesale Distribution and Trade Not Otherwise Listed												X		C	X	X	C			3

Proposed Language (redlined changes are attached separately):



Section 10.136

Notes to the Table of Permitted Uses

1. **Accessory Uses in Residential Districts** - Accessory uses in residential districts such as garages, utility buildings are restricted to rear yards or side yards unless the required setback can be maintained. For a noncommercial greenhouse that is an accessory use, the heating plant for the greenhouse must be located within 60 feet of the front property line or within 10 feet of any other property line. In addition, in the R-18 district, one private stable on a lot at least 20,000 square feet in area is permitted, provided the stable is located at least 60 feet from the front property line and not less than 10 feet from any other property line.

On lots occupied by multifamily dwellings, the following accessory buildings shall be permitted, provided their exteriors harmonize with the multifamily structures.

- a. Garages, located as required in section *Table of Area, Height, and Yard Regulations*.
 - b. Coin laundries, offices, and recreational buildings to serve residents of the multifamily development, provided they do not intrude into any minimum required yard.
 - c. Equipment storage buildings located as required in section *Table of Area, Height, and Yard Regulations*.
2. **Athletic Fields, Auditoriums, Stadiums** - All athletic fields shall have access to a collector or higher capacity street.
 3. **Automotive Towing Service** - The auto towing area must be screened with a six-foot high opaque fence in addition to the required planting yard. No outdoor storage or salvaging is permitted.
 4. **Bars, Night Clubs, Dance Halls (as a principle use)** – All locations must meet the requirements of NCSS 18B-901, Issuance of [ABC] permits. Where the property on which a bar is located abuts residential property, screening including a minimum six-foot high opaque fence along the entire length of the property of the abutting residence(s). The main entrance of the building shall be toward a street zoned predominantly for nonresidential uses. Parking areas related to the establishment shall be located no closer than 30 feet to the property line of abutting residences. *(Amended by City council on 10/7/03, 5/5/2016)*
 5. **Batting Cages (outdoor); Golf Driving Ranges** - Fencing, netting, or other control measures shall be provided around the perimeter of the batting or driving area to prevent balls from leaving the area.
 6. **Building Supply Sales, Equipment Rental and Leasing (with storage yard)** - Outside storage shall be completely screened from view with opaque fencing.
 7. **Car Wash** - Building(s) shall be at least 75 feet from any property line which adjoins residential or office-institutional zoned property. A minimum six-foot high opaque fence shall be provided adjacent to all residentially zoned property. Hours of operation shall be between 8:00 a.m. and 8:00 p.m. when adjoining developed residentially zoned property. Adequate provision shall be made for safe and efficient disposal of waste and runoff.



8. **Cemetery/Mausoleum** – A cemetery or mausoleum as a principal use shall comply with state law requirements for minimum contiguous acres. Principal access must be from a collector street or higher capacity street.
9. [Reserved]
10. **Machine Shop** - In I-1, no punch presses over 20 tons rated capacity, drop hammers or automatic screw machines are permitted.
11. **Parking Lots Serving Uses Permitted in the District Where Located** - A special use permit is required for a parking lot in a residential district when it serves a non-residential establishment.
12. **Satellite Dish (Freestanding Accessory Use)** - All supporting cables and anchors shall be contained on the property where the satellite dish or tower is located. In residential districts, structures larger than 24 inches in diameter can only be placed in a rear yard or side yard behind the building lot line. Structures less than 24 inches in diameter are not subject to these restrictions.
13. **Storage Yard** - Outside storage is permitted as a principal or accessory use if completely enclosed by opaque fencing at least six feet high.
14. **Swimming Pools (community nonprofit)** - Minimum fence height six feet, made of chain link with wood slats, chain link with a planted border at least five feet in height, or other opaque materials. All N.C. Division of Health regulations to be followed.
15. **Swimming Pools (as accessory uses)** - Pools and appurtenances shall be located in the rear or side yard and may not be located within five feet of interior rear or side lot lines. Pools which are not an integral part of the principal building shall be located a minimum of ten feet from the principal building. *(Section 10.136(15) amended by City council on 5/1/2012)*
16. **Unattended facilities for public utilities** - Unattended facilities for public utilities shall be added to all use districts under the following conditions:
 - a. The structure shall be used only for housing electronic equipment (no storage). These structures shall have no water and sewer facilities. The maximum size shall be 12 feet by 20 feet by 8 feet high.
 - b. Dimensional requirements: minimum setback 20 feet; side and rear yards 15 feet; minimum lot area 3,000 square feet; minimum lot width 50 feet.
 - c. All utilities shall be placed underground.
 - d. The site shall be landscaped in character with the surrounding neighborhood. The structure shall be screened with suitable evergreens. Natural ground cover should be left on the site where possible.
 - e. Two off-street parking spaces and ample turnaround area shall be provided.
 - f. Detailed site and landscape plans shall be submitted to the City.



17. **Utility Substations Including Transformer Stations, Pump and Lift Stations, etc.** - The entire facility shall have a security fence at least six feet high unless it is secured and is built of brick or concrete. If the installation abuts a residence, it must be at least 50 feet from the residence and screened from the residence with a thick buffer of evergreen shrubbery or trees, which will grow at least six feet tall. Equipment producing noise in excess of 70 decibels shall be located no closer than 100 feet from the nearest residence.

18. **Development Standards for Multifamily Developments in R-MF and R-G, Site Plans Required**

- (1) Lot Coverage - The total ground area covered by the buildings and all accessory buildings including any roofed area, shall not exceed 40 percent of the total lot area.
- (2) Open Space
 - (i) Usable open space. A minimum of 10 percent of the total land area of any lot containing three or more dwelling units shall be usable open space, as defined in Article II - Definitions. On lots where the required usable open space is less than 20,000 square feet, such space should be approximately square but in no case shall the length of such required space be more than twice its average width. On lots where the required usable open space is 20,000 square feet or more, the minimum dimension of such space shall be at least 100 feet, and the minimum size space allowable as meeting a part of the required usable open space shall be 20,000 square feet.
 - (ii) Private usable open space. The total usable open space as required in subparagraph (a) immediately above may be reduced by 50 percent if a minimum of 500 square feet of private usable open space is provided for each dwelling unit. Such space shall be directly accessible and adjacent to the dwelling unit it serves, and shall be so arranged and screened to prevent public traffic through such space and provide reasonable privacy from public view. Such space shall be suitable for recreational activity and shall be unobstructed except for plants, lawn furniture, and play equipment. Private terraces and walkways may be included in such open space. Parking areas, vehicle drives, and storage areas shall not be included in such open space. The minimum dimension of any such private open space shall be at least 15 feet.
- (3) Separate Zoning Lot - A multifamily dwelling shall not be placed behind and on the same zoning lot as a single-family detached dwelling.
- (4) Access to Fire protection - To permit adequate fire protection, all portions of every building shall be located within 500 feet of a public street that furnishes direct access to the property unless the fire chief determines that fire hydrants and service drives will offer adequate protection.
- (5) Traffic Circulation - All common driveways shall have approved traffic circulation and shall be kept available for emergency and service use by any public vehicle.
- (6) Parking Access - Off-street parking spaces shall be located within 200 feet of each building in an amount proportional to the number of dwelling units in each building. No parking area with five or more spaces shall be located closer than 10 feet to a dwelling wall with windows or doors.



(7) Screening of utility areas. Utility areas such as clothes drying yards and outdoor storage areas in multifamily developments shall be provided with an opaque screen along any side of such areas which would be visible from a public street or adjoining residentially, zoned properties. No such utility areas shall be located in the area between a building and a street bordering the development. Screens are not to be brightly colored multicolored, or otherwise obtrusive; colors and textures harmonious with nature and nearby residential structures are recommended.

(8) Required site plan. 10 site plans shall be submitted with the following information:

- i. Vicinity map showing the location of the property in relation to existing and proposed streets, streams, railroads and other major physical features.
- ii. Location, size and type of all buildings, existing and proposed, on or near the property.
- iii. Grading plan.
- iv. Proposed points of vehicle ingress and egress, together with the proposed pattern of internal circulation.
- v. Proposed parking and loading areas.
- vi. Landscape plan prepared according to the Graham Landscape Ordinance.
- vii. Proposed provision of utilities.
- viii. Location, size, height, orientation and lighting information on all signs.
- ix. Layout and orientation of all buildings.

19. Performance Standards for All Uses in the I-1 and I-2 Zoning Districts

In order to retain a character consistent with the description of the I-1 and I-2 zoning districts, the following performance standards will be applied for all uses in the districts:

- a. *Dust, dirt, fly ash or other air pollutants.* There shall be no emission of dust, dirt, fly ash, gases, fumes, vapors or other air pollutants into the atmosphere that could cause damage to the public health, or to animals, vegetation, or other forms of property.
- b. *Electrical interference.* There shall be no electrical disturbances affecting the operation of any equipment other than that of the creator of such disturbances.
- c. *Heat and glare.* There shall be no heat or glare perceptible to human senses at the property line of any use creating heat or glare.
- d. *Landscaping.* See landscaping requirements on File in the office of the City clerk and inspection department.
- e. *Enclosure.* All processing shall be within a building.



- f. *Liquid or solid waste.* There shall be no discharge of any liquid or solid waste into any stream except as authorized by the State of North Carolina.
- g. *Noise.* The sound-pressure level of sound radiated from an establishment, measured at the lot line, shall not exceed the values in any octave band of frequency that are specified in the table below. The sound-pressure level shall be measured with a sound level meter and an associated octave band analyzer conforming to standards prescribed by the American Standards Association.

<i>Frequency Band (cycles per second)</i>	<i>Decibels</i>
20- 75	69
75- 150	57
150- 300	52
300- 600	46
600- 1200	42
1200- 2400	37
2400- 4800	33
4800-10,000	30

- h. *Odor* There shall be no objectionable odors perceptible to the human senses at or beyond the property line of any use that may create odors.
- i. *Radioactivity.* There shall be no radioactive emission that would be dangerous to health.
- j. *Smoke.* There shall be no emission into the atmosphere of smoke from any operation of a shade darker than Number one on the Ringelmann Smoke Chart as published by the United States Bureau of Mines, except that smoke of a shade not darker than No. 3 on said chart may be emitted for not more than 2 minutes in any thirty-minute period.
- k. *Traffic* There shall be no industrial vehicular traffic on any minor residential street.
- 1. *Vibration.* There shall be no vibration perceptible to human senses at the property line of any use that may create vibration.

20. **Day Care Center, Child, operated as home occupation (5 or less)** – Centers shall meet the standards established by the North Carolina Department of Health and Human Services. At least 200 square feet per child of completely enclosed fenced outside play area, not including drives, parking areas or land otherwise unsuitable, shall be provided. *(Section 10.136(20) amended 9/2/2003)*

21. **Family Care Facility** – A Family Care Facility (Family Care Home) shall not be located within a one-half mile radius of an existing Family Care Facility (Family Care Home). An “Existing Family Care Facility (Family Care Home)” for the purposes of this section shall mean one that has obtained a 180-day zoning compliance letter. *(Section 10.136(21) amended 6/3/2008)*

22. **Farmer’s Markets, as accessory uses** – Farmer’s Markets as accessory uses in the B-2, B-3 districts and churches are subject to parking requirements in Section 10.242. Vendors are responsible for obtaining all licenses and permits required for sale of their product. *(Section 10.136(22) amended 9/1/2009)*



23. **Group Care Facilities and Group Homes, Development Standards** – Off-street parking, as required by Section 10.240, shall be located to the side and/or rear of the building. Group Care Facilities and Group Homes should be located in areas where employment, goods and services can readily be reached by a variety of means of transportation. Access to transit, a sidewalk network and/or close proximity to employment, goods, and services are encouraged for approval of a special use permit unless the applicant can satisfactorily demonstrate that the intended residents of the group home or facility do not require this service. For halfway houses, there shall be on-site supervision at all times by persons employed by or volunteers trained by the agency operating the halfway house. Rules of conduct shall be established and enforced by the agency operating a halfway house. These rules shall prohibit the use or possession of drugs, alcohol or weapons, as well as disorderly conduct. *(Section 10.136(23) added 1/8/2013)*

24. **Solar Farms** – Power inverters and other sound producing equipment shall be no less than 150’ from any property line. All solar farms shall be enclosed with a minimum of six feet high security fencing. Solar farms shall be constructed with at least a Type C planting yard, and shall abide by higher requirements when applicable. The height of no panel can exceed fifteen feet. A setback of 100 feet is required for any installation adjacent to a residential use or a residentially zoned parcel. Prior to final approval of the electrical permit, a Decommissioning Plan (see definitions) shall be submitted to the City. *(added 2/2/2016)*

DIVISION 7. SPECIAL USES

Section 10.137 Purpose of special use regulations

Permitting special uses adds flexibility to the Zoning Ordinance. Subject to high standards of planning and design, certain property uses are allowed in districts where these uses would not otherwise be acceptable. By means of controls exercised through the Special Use Permit procedure, property uses that would otherwise be undesirable in certain districts can be developed to minimize any undesirable effects they may have on surrounding properties.

Section 10.138 Special uses shown in Table of Permitted Uses

Each use for which a special use permit is required is indicated in the Table of Permitted Uses, by an "S" in the column for a particular zoning district. The "S" indicates that such use may be placed in that zoning district only after a special use permit has been approved by the City council and issued by the zoning enforcement officer.

Section 10.139 Application for a Special Use Permit

Applicants for a special use permit are advised to confer with the Planner before formal application for a permit in order to ascertain what information must accompany the formal application. Applications for special use permits shall be submitted to the Planner. Depending on the character and size of the proposed use, a plot plan or a preliminary site plan may be required showing any or all of the following information, in addition to the specific conditions set forth under each special use:



- a. Vicinity map, showing the location of the property in relation to existing and proposed streets, streams, railroads and other major physical features.
- b. Location, size and type of all buildings, existing and proposed, on or near the property.
- c. Grading plan.
- d. Proposed points of vehicle ingress and egress, together with the proposed pattern of internal circulation.
- e. Proposed parking and loading areas.
- f. Landscape plan, showing the number, location, size and name of each plant species; and the proposed ground cover, especially on slopes, banks, and ditches. If the special use permit is approved, the landscape plan shall be carried out within one year of the date of issuance of the certificate of occupancy; landscaping shall be permanently maintained thereafter.
- g. Proposed provision for utilities.
- h. Location, size, height, orientation, and lighting information on all signs.

Section 10.140 Timing of Submissions

The applicant must submit the required plans and request for a special use permit on or before the 25th day of the month preceding the planning board meeting at which consideration is desired.

Section 10.141 Role of Planning Board

The planning board shall review applications for special use permits, together with accompanying plans, maps, and drawings. The planning board may recommend that the City council (1) deny the special use permit, or (2) approve the special use permit subject to the conditions for individual special uses, or (3) approve the special use permit subject to the conditions for individual special uses and other reasonable conditions recommended by the Planning board. The Planning board may also recommend modifications of the original plans.

Section 10.142 Role of Historic Resources Commission

As provided for in Section 10.205, the Historic Resources Commission is authorized to review and comment on special use applications for proposed uses within any historic district or historic landmark. Recommendations and comments from the commission shall be relayed directly to the City council for consideration along with the Planning board's recommendations.

Section 10.143 Role of City Council

For each application for a special use permit the City council shall hold a public hearing, notice of which shall be published in the same manner as required for a hearing on an amendment to this article. When deciding a special use permit, the City council shall follow quasi-judicial procedures as required by law. At the public hearing the City council shall review the application for a special use permit, together with accompanying plans, maps, and drawings. Recommendations of the planning board shall be heard. The



City council may (1) deny the special use permit, or (2) grant the special use permit subject to the conditions for individual special uses, or (3) grant the special use permit subject to the conditions specified for each use listed in Section 10.149 (Special uses listed) and to other reasonable conditions the council imposes upon the permit. Subject to S.L 2019-111, Pt. I, the City council shall not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. The Council shall obtain the applicant or land owner's written consent to conditions related to a special use permit to ensure enforceability. There shall be competent, material and substantial evidence in the record to support the Council's findings of facts and conclusions. No vote greater than a majority vote shall be required for the City council to issue special use permits. Vacant positions on the City council and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the City council" for calculation of the requisite majority.

(Section 10.143 amended 7/11/2006)

Section 10.144 Findings

In granting a special use permit, the council shall find that all of the conditions listed below have been met, or it shall be denied.

- (1) That all applicable regulations of the zoning district in which the use is proposed are complied with.
- (2) That conditions specific to each use, identified by this Ordinance are complied with.
- (3) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.
- (4) That the use will not substantially injure the value of adjoining property or that the use is a public necessity.
- (5) That the location and character of the use if developed according to the plan as submitted will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the Graham planning area.
- (6) That satisfactory provision has been made for the following, when applicable: vehicle circulation, parking and loading, service entrances and areas, screening, utilities, signs and lighting, and open space.

Section 10.145 Conditions added by Council, Limitations

In granting a Special Use Permit, the Council may designate only those conditions, in addition to those already contained in this ordinance or proposed by the applicant, that will, in its opinion, assure that the use in its proposed location will be harmonious with the area. Examples of such additional conditions include landscaping or buffer provisions, conditions related to on-premises signage, conditions to reduce traffic congestion and other conditions directly related to the land use impact of the use on the area. The City council may modify the original plans to reflect such conditions which shall be entered into the minutes of the meeting at which the permit is granted.



Section 10.146 Conditions run with land

All special use conditions shall run with the land and shall be binding on the original applicants, their heirs, successors and assigns. In voting on a request for a special use permit, a vote by the majority of the City council membership shall be required to grant the request.

Section 10.147 Appeal

No appeal may be taken to the board of adjustment from the action of the City council in granting or denying a special use permit. The City council's action on an application for a special use permit, like the council's action on an application for an amendment to the ordinance, shall be reviewable by the courts as provided by law.

Section 10.148 Invalidation

In the event of failure to comply with the plans approved by the City council or with any other condition imposed by the City council upon the special use permit, the permit shall immediately become void and of no effect. No further building permits or certificates of occupancy shall be issued, and completed structures shall be regarded as nonconforming uses. A special use permit shall become null and void 24 months after the date of its issuance unless construction is begun during the twenty-four-month period.

Section 10.149 Special uses listed

The special uses listed on the following pages shall be permitted only after approval according to the process outlined in the preceding sections, and after the required findings have been made. All conditions specified for the individual uses, in addition to any conditions added by the council shall be complied with. Special use permits shall only be granted for uses specified in this ordinance.

(Section 10.149 amended 4/2/2002, 8/6/2002, 10/1/2002, 10/7/2003, 5/4/2004, 8/6/2013, 11/5/2013, 2/4/2014)

Use: Adult Establishment/Sexually Oriented Business

Special Use Districts: B-2 and I-1

Definition: See Sexually Oriented Business in Section 10.16, Definitions

Setbacks:

1. No sexually oriented business shall be located closer than 1000 feet to another adult establishment.
2. No sexually oriented business shall be located closer than 1000 feet to a residence or residentially zoned district.
3. No sexually oriented business shall be located closer than 1000 feet to a public or private elementary or secondary school, child day care center or nursery school, public park, church, or community college.
4. No sexually oriented business shall be located closer than 500 feet from a bar or night club.



All measurements shall be made by drawing straight lines from the nearest point of the lot line where the proposed adult establishment is to be located to the nearest point of the lot line or boundary of the closest adult establishment, residence, residentially zoned district, public or private elementary or secondary school, child day care center or nursery school, public park, church, community college, bar, or night club.

Other Restrictions:

1. There shall not be more than one (1) sexually oriented business in the same building, structure, or portion thereof. Additionally, no other principal or accessory use may occupy the same building, structure, property, or portion thereof with any sexually oriented business.
2. Flashing lights or fluttering devices designed and used to attract attention are not permitted.
3. Sound amplification shall not be directed outside any building or structure occupied by a sexually oriented business.

Additional Information to Be Provided by Applicant: In addition to information normally provided in the course of applying for a special use permit, the applicant shall provide:

1. His/her name, address, and age, or if a partnership, the names, addresses, and ages of the persons who constitute such partnership, or if a corporation, the names, addresses, and ages of its directors, officers, and principal stockholders. Each application shall also include the names, ages, and addresses of all present employees.
2. A complete statement of all convictions of any person whose name is required to be given in Number 1 above for any crime other than traffic violations.

Action by City

1. The City staff shall be given 30 days from receipt of a completed application form to verify the information contained in the application prior to any further steps being taken, including placing the application on the Planning board agenda.
2. The City staff shall verify that the applicant, or any person having a legal or beneficial interest in the establishment, or any employee, has not been convicted of any crime involving sexual misconduct, including -but not limited to, N.C.G.S. 14-177-14-202.1, 14-203 -14-208, or any local, state, or federal law related to racketeering or the possession, sale, or distribution of a controlled substance.
3. No permit shall be issued to an applicant whose information reveals anyone with a legal or beneficial interest or an employee having a record of conviction of a crime.

Revocation of Special Use Permit:

Failure to comply with the conditions of a special use permit is a violation of this ordinance. In addition, as provided in Section 10.148, failure to carry out any conditions relating to a special use permit shall be cause for the revocation of the permit. Failures of compliance include but are not limited to: misstatements of fact contained in an application discovered after issuance of the permit; the applicant's allowing persons or corporations to own an interest in or be employed by the business after



issuance of the permit whose ownership or employment would have originally prevented issuance of the permit; violation of a zoning, building, or fire prevention ordinance by the permittee.

Use: Antique and Other Specialty Shops in Structures Designed for Residential Use

Special Use Districts: O-1

General Restrictions

1. No more than two salespersons may be employed on the premises at any given time.
2. No flashing lights or fluttering designed and used to attract attention shall be permitted.
3. No lights shall be so arranged as to direct light into any residence.
4. If the shop is within 100 feet of any dwelling, other than that of the shop operator, the shop shall not operate between the hours of 6:00 p.m. and 9:00 a.m.

Use: Car Wash

Special Use Districts: B-3 District

General Restrictions

1. No flashing lights or fluttering devices designed and used to attract attention shall be permitted.
2. No outdoor storage of any equipment, merchandise, or rubbish shall be permitted.
3. All floodlights shall be turned off at the close of business or at 11:06 p.m., whichever is earlier.
4. No lights shall be so arranged as to direct or reflect light into any residence.
5. No curb cut shall be less than 25 feet from the intersection of any two street curb lines. Curb cuts shall not be wider than 25 feet. No more than two curb cuts shall be permitted on each abutting street.
6. An opaque screen at least eight feet in height shall be provided along each property line adjoining a district zoned residential.

Use: Condominiums

Special Use Districts: R-12, R-9 and R-7

1. A preliminary site plan shall be submitted.
2. The dimensional requirements for multifamily developments shall apply.
3. The off-street parking requirements for multifamily developments shall apply.



Use: **Electronic, Internet or Sweepstakes Gaming.**

Special Use Districts: **B-2 and I-1, except not permitted in any of these districts if in a unified business development**

Setbacks:

1. No Electronic, Internet or Sweepstakes Gaming establishment shall be located closer than 1000 feet to another Electronic, Internet or Sweepstakes Gaming establishment.
2. No Electronic, Internet or Sweepstakes Gaming establishment shall be located closer than 1000 feet to a public or private elementary or secondary school, child day care center or nursery school, public park, church, or community college.
3. No Electronic, Internet or Sweepstakes Gaming establishment shall be located closer than 500 feet from a bar or night club.

All measurements shall be made by drawing straight lines from the nearest point of the lot line where the proposed Electronic, Internet or Sweepstakes Gaming establishment is to be located to the nearest point of the lot line or boundary of the closest Electronic, Internet or Sweepstakes Gaming establishment, residence, residentially zoned district, public or private elementary or secondary school, child day care center or nursery school, public park, church, community college, bar, or night club.

Other Restrictions:

1. There shall not be more than one (1) Electronic, Internet or Sweepstakes Gaming establishment in the same building, structure, or portion thereof. Additionally, no other principal or accessory use may occupy the same building, structure, property, or portion thereof with any Electronic, Internet or Sweepstakes Gaming establishment.
2. Flashing lights or fluttering devices designed and used to attract attention are not permitted.
3. Sound amplification shall not be directed outside any building or structure occupied by an Electronic, Internet or Sweepstakes Gaming establishment.
4. Alcohol may not be consumed or sold on any premises with Internet or Sweepstakes Gaming.
1. Any building and/or zoning permits issued for the Internet or Sweepstakes Gaming operation shall be subject to annual review to ensure compliance with all relevant regulations and conditions.
2. No person under the age of eighteen (18) will be allowed in the establishment, and age must be verified for each customer at the time of entry into the establishment.

City's Review of Special Use Permit Application

1. The City staff shall be given 30 days from receipt of a properly completed application to verify the information contained in the application before further steps are taken. The staff shall verify that:
 - a. The application must contain no misstatement of fact.



- b. The applicant has not been convicted of a felony within the past three years, and if convicted of a felony before then, has had citizenship restored.
- c. The proposed site meets building and fire prevention codes and the property complies with zoning requirements.

Revocation: A special use permit issued pursuant to this section may be evoked by action of the council it finds that:

- 1. A misstatement of fact contained in the application is discovered after issuance of the permit.
- 2. The permittee has violated or allowed to be violated any provision of this subsection.
- 3. The permittee violates any zoning, building, or fire prevention ordinance.
- 4. The permittee operates any unlawful game of chance at which any money, property or other thing of value is bet, whether the same be in stake or not, including but not limited to: "numbers", "tickets", Pyramid and chain schemes, faro bank and tables, punchboards, slot machines, vending machines, or game tables.

Use: **Golf courses**

Special Use Districts: **R-18, R-15, R-12, R-9, I-1 and I-2**

Development Standards:

- 1. Every green shall be at least 150 feet from any property lines.
- 2. All buildings shall be at least 100 feet from a property line.
- 3. Lighting shall be shielded so that direct light is not cast onto adjacent property.

Use: **Golf, swimming, and tennis clubs**

Special Use Districts: **R-18, R-15, R-12 and R-9**

Development Standards

- 1. Every green shall be at least 150 feet from a property line.
- 2. Tennis courts shall be at least 75 feet from interior lot lines.
- 3. Buildings and swimming pools shall be at least 100 feet from interior lot lines.
- 4. Lighting shall be so shielded as to cast no direct light upon adjacent property.



Use: Lodges, Civic, Social and Fraternal Organizations, not used for Parties at Night

Special Use Districts: R-18, R-15, R-9, R-MF, R-G and O-I

Development Standards:

1. The site shall be at least one acre in size.
2. Structures, activities and parking areas shall be located at least 40 feet from property lines.
3. Lighting shall be shielded so that it does not cast direct light on adjacent property. Public address systems and sound amplification shall be contained within buildings.
4. Music that is audible at the property lines of adjacent residential property shall not be permitted.

Use: Lodges or Other Buildings Rented or Used for Parties at Night

Special Use Districts: R-18

Development Standards

1. The site shall be at least three acres in size.
2. Structures, parking areas and activity areas shall be located less than 40 feet from any property line.
3. Lighting shall be shielded so that it does not cast direct light on adjacent property.
4. Public address systems and sound amplification shall be contained within buildings.
5. An opaque screen shall be provided within the forty-foot space adjacent to the side and rear lot lines.

Use: Manufactured Home Parks

Special Use Districts: R-G

Manufactured home parks shall be permitted as a special use upon evidence that a desirable environment for family living will result. To this end, consideration will be given to amenities of the site plan such as the degree of privacy afforded to each unit, protection from adjacent commercial and industrial activities, recreational facilities, landscaping and avoidance of traffic congestion.

Classification of Units Permitted: Class AA, A or B manufactured homes are permitted in parks. Consistent with the definitions of Class AA, A and B manufactured homes, units in manufactured home parks shall be set up in accordance with standards established by the N.C. Department of Insurance. All removable hitches shall be removed.

Minimum Area: Six acres. The site may be divided by a public street, provided that each adjacent portion of the site shall contain at least two acres, and the average horizontal dimension shall be at least 120 feet.



Setback of Park: Each boundary of the park must be at least 200 feet from any permanent residential building located outside the park unless separated by a natural or artificial barrier.

Buffer: A greenbelt planting strip, at least 20 feet wide shall be located along all perimeter boundaries of the manufactured home park not bordering a public street. The greenbelt shall include an opaque screen. No manufactured home or other structure and no driveway shall be located in the buffer.

Development Standards:

1. Minimum dimensions of sites:
 - 7,000 square feet area for each area
 - 50 feet width for each site
 - 20-foot setback for each unit from a private driveway or public street
 - 15-foot side yard along each side of every site
 - 20-foot rear yard, but not required where site abuts a greenbelt on rear
2. Placement of Units: Placing manufactured homes side by side with their long axles parallel should be avoided unless the distances between them are substantially increased above the minimums specified herein.
3. Parking: A minimum of two spaces per lot shall be provided
4. Roads: All spaces shall abut upon a paved roadway at least 20 feet wide. Specifications for pavement shall be the same as for City-maintained streets. Roads shall have unobstructed access to a public street, alley or highway. The City will inspect roads during roadway construction to assure that paving standards are met.
5. Walkways: Walkways at least three feet wide shall be provided from the manufactured home spaces to the service buildings.
6. Drainage: The park shall be located on a well-drained site, properly graded to ensure rapid drainage and freedom from standing water.
7. Utilities: Electrical, telephone, cable television, and other utilities shall be constructed underground. Necessary easements of at least 10 feet must be provided. ElectricCity shall meet requirements in current edition of the National Electrical Code.
8. Recreation area: A minimum of 5,000 square feet of usable, developed recreation area shall be provided for every manufactured home park. The area shall be at least 100 square feet per manufactured home space. (Area must not be used for septic tank fields or contain features such as ditches that limit access and use.)
9. Lighting of roads and walkways: All roadways and walkways within a park shall be hard-surfaced and lighted at night with electric lamps of not less than 100 watts each, spaced at intervals of no more than 100 feet, or equivalent lighting as approved by the City. Such lighting shall be the responsibility of the park owner.
10. Water, sewer: Manufactured home parks shall provide City water and sewer to all facilities and to each manufactured home space. A single meter shall be provided for the entire park.



11. Garbage receptacles: The park owner shall provide for adequate, regular methods of waste disposal and collection. Either sanitary bulk containers (dumpsters) or individual garbage containers for each space may be used. If individual garbage containers are provided, private waste collection companies are allowed to enter the park to collect waste at each space. If bulk containers are provided, they must be located within 300 feet of each manufactured home space. The bulk container shall be kept in a sanitary condition at all times.
12. Register: The operator of a manufactured home park shall keep a register containing the names of all occupants, the date of arrival and the license number of the automobile and manufactured home. The register shall be available at all reasonable times for inspections by representatives of the City.
13. Accessory Buildings: Permitted accessory buildings include:
 - Coin laundries, offices, and recreational buildings to serve residents of the manufactured home park only, provided they are not within 50 feet of any manufactured home and do not intrude into any required yard.
 - Equipment storage buildings located as required in the Table of Area, Height, and Yard Regulations
 - An administrative office.
 - a. Accessory service buildings shall be well lighted at all times of the day and night; shall be well ventilated, with screened openings; shall be constructed of such moisture-proof material, including painted woodwork, as shall permit repeated cleaning and washing; and shall be maintained at a temperature of at least 62 degrees Fahrenheit from October first through May first. The floors of service buildings shall be of water-impervious material.
 - b. No building shall be located closer than 30 feet to any manufactured home.
 - c. All service buildings and the grounds of the park shall be kept clean and free from any condition that will menace the health of any occupant or the public or constitute a nuisance.
 - d. Maintenance of service buildings shall be the responsibility of the owner of that manufactured home park
14. Fire protection: The park shall meet the most recently adopted standards for adequate fire protection established by the National Fire Protection Association.
15. Skirting: All manufactured homes moved into the City of Graham or its extraterritorial jurisdiction, shall be skirted. A time limit of up to sixty (60) days shall be granted to install skirting. After the sixty-day period, the building inspector shall inspect the skirting for compliance with this section. Skirting must be a noncorrosive, durable material such as vinyl or other suitable material approved by the building inspector. The color shall be in keeping with the color scheme of the manufactured home. All removable hitches shall be removed.

Preliminary Site Plan: In applying for a special use permit the developer of a manufactured home park shall submit plans and specifications showing compliance with the Development Standards listed above. The preliminary site plan shall include or show:



1. A legal description of the property shown and referenced to major streets and tax map number, drawn to scale, clearly showing the extent and area to be used for manufactured home park purposes.
2. The number, size and locations of all manufactured home spaces.
3. Location of underground water, sewer, and gas lines; electric and telephone wires
4. Location and specifications for water taps, sewage disposal connections and other facilities on each manufactured home space.
5. Location of all buildings, proposed or existing, in the area to be used as a manufactured home
6. Location of all roads, driveways and walkways serving the park and each space
7. The original and finished grade of the property.
8. The location by insert map showing true north.
9. A plan for providing fire protection and safety, where applicable.
10. A plan for providing fire protection and safety, where applicable.
11. Plans shall specify the method of garbage disposal

Approval must be obtained from the appropriate state and local agencies for construction of the systems if required.

Use: Manufactured home sales

Special Use Districts: B-2, I-1, I-2

Development Standards:

1. The site shall be at least one acre in size.
2. No manufactured home sales lot may be located closer than 5,000 feet to another manufactured home sales lot.
3. At least 60 percent of property shall be open land.
4. All setback requirements of the zoning district shall be observed.
5. No manufactured home shall be located closer than 20 feet to the nearest other manufactured home or structure.
6. Off-street parking shall be one parking space per two manufactured homes, minimum of five parking spaces.



7. No manufactured home sales lot shall be located in a flood zone area as shown on the City's FEMAmaps.
8. Sales office must be constructed in order to comply with N.C. State Building Code, which includes modular construction, as defined by the North Carolina Department of Insurance.

Use: Mini warehouses

Special Use Districts: B-2

Lot size: Between two acres (minimum) and five acres (maximum).

Maximum Height: 20 feet, not exceeding one story.

Storage: No outside storage is permitted.

Storage of hazardous, toxic or explosive substances is prohibited.

Operation: No business activity other than the rental of storage units shall be conducted on the premises.

One dwelling unit shall be allowed on the same lot for use as a caretaker dwelling.

Lighting: Lights shall be arranged so that no light or glare is directed into a residence.

Screening: An opaque screen at least eight feet high shall be provided along each property line adjoining a residentially zoned district.

Use: Parking Lot in O-I District to Serve a Use Not Permitted in O-I

Special Use Districts: O-I

Development Standards:

1. Nighttime parking shall be permitted only after attending by the City council that nighttime use will not adversely affect nearby properties.
2. If provided, lighting shall be arranged so that no direct or reflected light shall be a nuisance to other properties or persons.

Use: Parking Lot or Driveway Serving a Use not Permitted in the District

Special Use Districts: R-12, R-9 and R-7

Development Standards:

1. The parking lot shall adjoin or lie directly across the street from the property served.
2. The parking lot shall be paved with an all-weather surface.



3. Lighting shall be arranged so that direct or reflected light is not a nuisance to other properties.
4. The parking lot shall not extend more than 200 feet into a residential district unless a finding, described below, is made by the City council.

Findings by Council:

1. The City council shall permit nighttime parking only after a finding that nighttime use will not adversely affect nearby properties.
2. The City council shall permit extensions of parking lots more than 200 feet into a residential district only after a finding that extension to a specified greater distance will not adversely affect nearby properties.
3. An opaque screen shall be provided where the City council finds such a screen necessary to protect nearby property.

Use: **Recycling Processing Centers**

Special Use Districts: **I-1 and I-2**

Development Standards:

1. No recycling facility shall locate within a 500-foot radius of any residentially or office and institutionally zoned property.
2. No outside storage of materials is permitted
3. The facility shall be operated in a wholly enclosed building except that if the facility is adjacent to railway tracks, loading into a railway car may take place outside the building provided no materials remain on the loading area for more than 24 hours.

Use: **Telecommunications Towers (Cellular, PCS, Radio, TV, etc.)**

Special Use Districts: **I-1 and I-2**

Setback and Height Requirements:

1. Non-residential districts - The minimum distance from the base of the tower to the nearest property line shall be equal to or greater than the height of the tower. The City council shall have the option to waive this provision upon receiving documentation from the petitioner that the tower is engineered such that in the event of collapse, the tower will fall upon itself within the property boundaries upon which it is located. This option may require the establishment of a setback equivalent to a fall zone easement certified by a professional engineer registered in North Carolina. In any case, the minimum setback for a tower and all appurtenant structures shall be 25 feet from the nearest property line.
2. Proximity to right-of-way - No freestanding or guyed tower may be constructed closer than the tower's height from any public right-of-way.



Appurtenant Structures for Tower Operations:

An appurtenant structure constructed for the purpose of housing equipment related to tower operations may accompany each tower. Such structures shall be unmanned and be limited to 240 square feet of gross floor space for each tower and co-locator (e.g. 3 users on a tower equals three times 240 square feet for accessory structures). Setback for these structures shall be at least 15 feet from any property line.

Fencing and Screening:

1. The base of the tower, including but not limited to equipment and/or storage structures, along with any guy wires shall be enclosed by a commercial grade chain link fence (or fence of equal or greater quality) a minimum of eight feet in height.
2. A vegetative screen shall be planted around the security fencing consisting of at least two staggered rows of evergreen shrubs on five feet centers, at least five feet tall at the time of planting, unless existing vegetation or topography is determined to provide screening at least as effective as the planted screen.

Preliminary Site Plan:

The applicant shall present a preliminary site plan showing:

1. Siting and size of existing and proposed structures and descriptions of the color and nature of all exterior materials;
2. Existing trees and plantings as well as new plantings required for fencing and screening;
3. Existing and proposed topography at a contour interval of five feet;
4. Any officially designated floodways and floodplains;
5. Locations of access easements and parking areas.

Letters from Permitting and Regulatory Agencies

The applicant shall provide letters from all applicable government regulatory agencies such as the FCC, FAA and Burlington Airport Authority verifying that the agency's requirements have been met.

Power output and EMF Emissions:

The output for towers shall not exceed federally approved levels for exposure to electronic magnetic force. The petitioner shall also certify that the tower operations will not interfere with normal radio and television reception in the vicinity.

Tower Lights

Towers shall be provided with warning lights pursuant to FAA and FCC guidelines.

Minimum Distance between Towers:



Towers established pursuant to this ordinance and greater than 75 feet in height shall be located no closer than one mile from another tower greater than 75 feet in height. The council shall have the option to waive this provision if it is determined that a less objectionable site can be established at a closer location, or that other sites are not suitable for proper coverage.

Co-location:

1. Co-location of telecommunications operations on towers is encouraged to maximize use of towers and to reduce the number of towers serving the City and its environs. Co-location on a previously approved tower is permitted without an additional special use permit, provided all conditions of the previously approved permit are complied with. Co-location on a building or substantial structure such as a water tower or electric transmission tower is permitted without a special use permit. However, all applicable provisions of the zoning ordinance shall be met, and the authorized City official should review plans.
2. Towers less than 150 feet in height shall be adequately designed and of sufficient height to accommodate at least one additional user. Towers greater than 150 feet in height shall be designed to accommodate multiple additional users. The applicant for special use permit to construct a new tower shall submit plans indicating the intent to allow shared use of the tower, the number of shared users allowed, and how other users are to be accommodated. The applicant shall also present documentation that no suitable existing facilities within the coverage area are available to the applicant. Evidence may be in the form of maps, letters from adjacent tower owners, or calculations. Facilities include other towers, elevated tanks, or other structures. In addition, a professional engineer shall present documentation that the tower has sufficient structural integrity to accommodate more than one user.

Cessation in Use:

If the wireless telecommunications towers cease to be used for this purpose, then the tower owner shall dismantle and remove the tower and accessory structures from the site, within 120 days from the date the tower is taken out of service. The tower owner shall notify the Planner when any transmission tower is placed out of service. This Special Use Permit expires 120 days after the date that any transmission tower is taken out of service. Prior to final approval of the Electrical Permit, a Decommissioning Plan (see definitions) shall be approved by the City. *(amended 5/3/2016)*

Historic District:

Towers are not permitted in a designated historic district or on property on which a designated historic landmark is located. In addition, towers shall not be constructed within 350 feet of a designated historic district or an historic landmark. "Historic" means a district or landmark, which has been nominated, to the National Register of Historic Places.

Outside Storage:

Outside storage is not permitted on the tower site.



Use: **Townhouse Developments**

Special Use Districts: **R-12, R-9 and R-7**

1. A preliminary site plan shall be submitted. It shall number and show the location and dimensions of the sites within the development along with other information required by the City.
2. The dimensional requirements for multifamily developments shall apply.
3. The off-street parking requirements for multifamily developments shall apply.

Use: **Trucking or Freight Terminal, Truck Sales, Truck Storage, Repair, Wash, or Maintenance, and Truck Stop or Auto Plaza**

Special Use Districts: **B-2 (Truck Sales only), I-1, and I-2**

- 1) A traffic impact analysis/study, prepared by a qualified professional engineer registered to practice in North Carolina, shall be submitted with an application for a Special Use Permit. The purpose of the study is (a) to ensure that the proposed use does not adversely affect the transportation network, (b) to identify any traffic problems associated with access from the site to the existing transportation network, (c) to delineate solutions to potential problems, and (d) to present improvements to be incorporated into the proposed facility.
- 2) Where applicable, points of ingress and egress shall be shared between adjoining uses that are similar in nature to any road maintained by the City of Graham or the North Carolina Department of Transportation.

Use: **Unified Business Development and Shopping Center**

Special Use Districts: **O-1, B-2, B-1, I-1 and I-2**

Description: A unified business development (UBD) consists of one or more principal structures or buildings, together with accessory structures or buildings, containing two or more stores, service establishments, offices, or other permitted uses. A development of this type is planned, organized, and managed to function as a unified whole and featuring all of the following: 1) common driveways, 2) common parking, 3) common signage, and 4) common landscaping plan. Examples are shopping centers, retail centers, office parks, and business parks having the characteristics listed above. Such unified business developments may include outparcels for lease or for sale, which may be intersected by public streets. Any such unified business development may be organized as a condominium or in a manner analogous to that of a townhouse development (with ownership of parcels beneath the building units and with parking and driveways being in common area owned and maintained by an Owners Association).

Condominium and Townhouse Unified Business Developments: Any unified business development that is proposed to be organized as a condominium or townhouse development must follow the procedures established for condominium and townhouse uses, as specified in Section 10.149. However, the provisions for Dimensional Requirements: Off-Street Parking and Loading Requirements in each of these sections shall not be used in the site plan layout, but will be based on the standards for the underlying zoning district. If a nonconforming building is converted into a condominium or townhouse



development, the Declaration and Final Plat shall disclose such nonconformity and explain potential consequences of such nonconformity in case of substantial damage to the building.

Access to Street or Thoroughfare: Such developments shall abut a major thoroughfare, minor arterial, or collector street (existing or proposed) as shown on the Burlington-Graham Thoroughfare Plan. Access to the street or thoroughfare shall be by mean of a service road, or direct access, keeping in mind the need to control congestion on and into the thoroughfare or street.

Administrative Approval: When the anticipated traffic load is less than 250 vehicles per day, the approval for this UBD may be treated as a “Unified Business Development, Light” and be considered use by right by the City Planner, or referred to Council as they so choose. However, if the traffic increases beyond this amount, or is anticipated to increase beyond this amount, the applicant must come before the City council to be approved, or the parcel must have only one use. *(added 5/3/2016)*

Uses to be Enclosed: Required Screening:

1. All uses shall be completely enclosed in buildings except for plant sales, sidewalk cafes, and permitted drive-in uses.
2. An opaque screen shall be provided wherever, in the City council's judgment, such screening is necessary to shield adjacent residential districts.

Uses Permitted in Unified Business District:

B-2 and I-1

1. All uses permitted in the B-2 District are permitted except for the following uses, which are not permitted: residential dwellings; animal hospital; automobile sales; car wash; amusements/water parks; bottling or dairy plant; commercial campgrounds; camping vehicle parks; contractor's storage yards (offices are permitted); day care centers (child and adult); farm equipment sales, storage and repair; funeral homes; golf courses (all types); hospitals; kennels; laundries, except self-service; lodges; manufactured home sales; nursing homes; plumbing shops; sign shop; stonecutting; monument manufacture and sales; tattoo business; tire recapping and retreading (principal use); truck sales; veterinarian; wholesale distributors.
2. Drive-in establishments offering goods or services directly to customers in parked cars shall be permitted only when the locations of buildings and access drives have been approved by the City council.
3. All business establishments shall be retail or service establishments dealing directly with the public.
4. Dry cleaning businesses are allowed with the following provisions: (a) No Hazardous Air Pollutants (HAPs), Resource Conservation and Recovery Act (RCRA) hazardous waste, or Occupational Safety & Health Administration (OSHA) labeled toxic substances allowed on premises and (b) no dry-cleaning chemical storage allowed on premises.



O-I and B-1

All uses permitted in the underlying districts are allowed within those districts. I-

2

All uses permitted in the underlying district are allowed within the Heavy Industrial District. *(added 5/3/2016)*

Sections 10.150-10.159 Reserved

DIVISION 8. RESERVED

Section 10.160-10.184 Reserved *(Planned Unit Development removed 8/2/2016)*

DIVISION 9. HISTORIC DISTRICT OVERLAY ZONE

Section 10.185 Purpose

The Courthouse Square Historic District, referred to in this division as the "district," is one of the most valued and important assets of Graham. It is established for the purpose of protecting and conserving the heritage of Graham, Alamance County and the state; for the purpose of safeguarding the character and heritage of the district by preserving the district as a whole and any individual property therein that embodies important elements of its social, economic, cultural, political or architectural history; for the purpose of promoting the conservation of such district for the education, pleasure and enrichment of residents of the district and Graham, Alamance County, and the state as a whole; for the purpose of fostering civic beauty; and for the purpose of stabilizing and enhancing property values throughout the district as a whole, thus contributing to the improvement of the general health and welfare of Graham and the residents of the district.

Section 10.186 Historic District Overlay Zone Established

The Courthouse Square Historic District is hereby established as a district which overlaps and overlays existing zoning districts, the extent and boundaries of which are as indicated on the official zoning map.

Section 10.187 Uses Conform to Underlying District

The Courthouse Square Historic District overlays several zoning districts. All uses permitted in any such zoning district shall be permitted in the historic district according to the procedures established in this ordinance.

Section 10.188 Dimensions Conform to Underlying District, Exceptions

Dimensional requirements shall be the same as those for the underlying zoning districts, except that



PROPOSED TEXT

Section 10.135 Table of Permitted Uses

Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-1	C-MXR	C-MXC	LUC
ABC Store (liquor)											X	X	C						C	3
Accessory Uses, See Note 1	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3
Office Space, Less than 5 employees									X	C	X	X	X	C	X			C	C	3
Office Space, More than 5 employees									X	C		X	X	C				C	C	3
Alteration, Clothing Repair											X	X	X	C				C	C	3
Ambulance, Fire, Police, Rescue Station	S	S	S	S	S	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3
Amusement/Water Parks/Fairs/Carnivals												S			S	S	C			4
Animal Hospital/Commercial, with outdoor kennels or runs, provided all runs and pens are at least 50 ft. from any property line												SX		C	X	X	C		C	3
Boutique Shops, No Outdoor Storage									SX	C	X	X	X	C	X			C	C	3
Large Items Store (appliances, hardware, furniture)												X	X	C	X		C		C	3
Athletic Fields, See Note 2	S	S	S	S	S	C	S	S	X	C	X	X		C	X	X	C	C	C	1
Auditoriums, Stadiums, and similar facilities where admission is charged or organized athletic events are held, See Note 2							S	S	S			S	S	C	S		C		C	4
Vehicle Accessory and Supply Sales												X		C	X		C	C	C	3
Vehicle assembling, painting, upholstering, rebuilding, reconditioning; body and fender work															X	X	C			4
Vehicle body and fender repair conducted within completely enclosed building												X		C	X	X	C		C	3
Vehicle Dealers/Rentals (new and used)												SX		C	X	X	C		C	3
Vehicle repair shops, not including body or fender repair												X		C	X	X	C		C	4

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Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC	
Vehicle Towing Services, See Note 3												X		C	X	X	C				4
Bank, Savings and Loan, Credit Union, similar financial institutions									X	C	X	X	X	C	X	X	C	C	C		2
Banquet Hall						C			X	C		X	X	C	X		C	C	C		3
Bars (as principal use), See Note 4												X	X	C			C	C	C		3
Barber Shop, Beauty Shop, Nail Salon											X	X	X	C	X		C	C	C		3
Batting Cages, Outdoor, See Note 5															X	X	C				4
Bed and Breakfast (Tourist Home)	SX	SX	SX	X	X	C	X	X	X	C	X	X	X	C				C	C		2
Billiard Halls, Bingo Games, Bowling Alleys, other public amusement establishments												X	X	C	X		C		C		3
Shops or Bulk Sales (with storage yard), See Note 6															X	X	C				4
Distribution Center															X	X	C				3
Bus station												S		C							3
Cabinet, woodworking and upholstery shops												X		C	X	X	C		C		3
Campgrounds, commercial	S											S			S	S	C				4
Car Wash, including Self Service, See Note 7												S	X	C	X	X	C		C		4
Cellular or Digital Communication Tower															S	S	C				5
Cemetery or Mausoleum. See Note 8	S	S	S	S	S				S				S	C	S	S	C				2
Religious Services	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X		C	C	C		2
Communication or Broadcasting Facility, without Tower											X	X	X	C	X	X	C		C		3
Community Centers, not including gymnasiums or stadiums	S	S	S	S	S	C	S	S	S	C	S	S	S	C	S	S	C	C	C		3
Contractors Offices, no outdoor storage									X		X	X	X	C	X	X	C		C		3
Convenience Store (with gasoline pumps >15' from property line)											X	X		C	X	X	C	C	C		3
Convenience Store (without gasoline pumps)									X		X	X	X	C	X	X	C	C	C		3

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Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-1	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-1	C-MXR	C-MXC	LUC
Day Care Center, Adult (Less than 6)							X	X	X	C	X	X		C	X		C	C	C	2
Day Care Center, Adult (6 or more)									X	C	X	X		C	X		C		C	2
Day Care Center, Child meeting licensing and safety standards							X	X	X	C	X	X		C	X		C	C	C	2
Day Care Center, Child, operated as home occupation (5 or less), See note 20	X	X	X	X	X	C	X	X	X	C	X	X		C	X			C	C	2
Dwelling, Duplex	X	X	X	X	X	C	X	X	X									C	C	1
Dwelling, condominium			S	S	S	C	X	X		C				C				C	C	2
Dwelling(s), located in the second or higher story of a commercial structure									X	C	X	X	X	C				C	C	1
Dwelling, Multifamily, site plan required see Note 18						C	X	X		C				C				C	C	3
Dwelling quarters for operators, caretakers, etc. in or adjacent to buildings primarily for nonresidential use									X	C	X	X	X	C	X	X	C	C	C	3
Dwelling, Single Family Detached	X	X	X	X	X	C	X	X	X	C	X	X	X	C				C	C	1
Dwelling, Townhouse			S	S	S	C	X	X										C	C	2
Dry cleaning/Laundry (not self-service)												X		C	X	X	C	C	C	3
Electronic, Internet or Sweepstakes Gaming												S			S	S				5
Equipment Rental, Leasing or Repair (no outside storage)												X		C	X	X	C		C	3
Equipment Rental, Leasing or Repair (with outside storage), See Note 6															X	X	C			5
Explosives storage, long-term or temporary, in accordance with latest edition of National Fire Code																S				3
Family Care Facility (Family Care Home), See Note 21	X	X	X	X	X	C	X	X												1
Farms	X																			1
Farmer's Market (as Accessory Use, See Note 22)											X	X	X							

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Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-1	C-MXR	C-MXC	LUC	
Food processing wholesale quantities, excluding slaughtering															X	X	C				4
Flea Market, provide no permanent outdoor display and all sale items and temporary signs are placed inside the permanent building on premises after 6:00 p.m.												S			S	S	C				3
Floor Covering, Drapery or Upholstery Sales											SX	X	X	C	X		C		C	C	3
Florist											X	X	X	C				C	C	C	3
Funeral Home or Crematorium									X	C	X	X	X	C	X		C	C	C	C	2
Game Room, Video Game Room, Coin Operated Amusements												X	X	C						C	3
Garden Center or Retail Nursery	X						S	S				X		C	X	X	C		C	C	3
Golf Course, Miniature												X		C	X		C				3
Golf, swimming or tennis lodge or clubs	S	S	S	S	S	C	S	S	S			S		C	S	S	C	C	C	C	1
Government Office									X	C	X	X	X	C	X	X	C	C	C	C	2
Group Care Facility, See Note 23						C	S	S	S	C	S	S		C				C	C	C	3
Group Home, See Note 23	S	S	S	S	S	C	S	S	S	C	S	S		C				C	C	C	1
Hazardous Waste Facilities																					5
Home Occupation	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	1
Hospital	S	S	S	S	S	C	S	S	S	C	S	X		C	S	X	C	C	C	C	4
Hotel, Motel or Executive Suites												X	X	C	X		C		C	C	4
Jails									S			S			S	S					4
Junkyards, Salvage Yards																S					5
Laboratories for testing and research												X		C	X	X	C		C	C	3
Landfill, for Household and Commercial Waste, State Permitted – No Hazardous Waste (Reserved)																S					5
Retail/Service With Outside Plant/Equipment Storage												X		C	X	X	C		C	C	3

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Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC
Laundromat, Coin-Operated											X	X	X	C	X	*	C	C	C	3
Library, Art Gallery or Museum									X	C	X	X	X	C				C	C	2
Life Counseling						6			X	C		X	X	C			C	6	C	2
Manufactured Dwelling Park								S												3
Manufactured Dwelling (Class AA) on Individual Lot								X												1
Manufactured Home Sales															S	S	7			3
Manufacturing and Industry (assembling, manufacturing, compounding, repair or treatment of articles or merchandise)																				
Ammunition, Small Arms																X				4
Animal Feeds																S				5
Apparel and Finished Fabric Products															X	X	C			4
Bakery Products															X	X	C			4
Batteries																X				4
Bottling Plant															X	X	C			4
Cement, concrete, lime, plaster, brick																X				4
Chemicals, Paints and Allied Products																X				4
Dairy Product Processing															X	X	C			4
Electrical Equipment															X	X	C			4
Fabricated Metal Products															X	X				4
Glass Products from Purchased Glass															X	X	C			4
Heating Equipment and Plumbing Fixtures															X	X	C			4
Household Appliances															X	X	C			4
Industrial and Commercial Machinery															S	X	C			4
Leather Products (no tanning)															X	X	C			4
Lighting and Wiring Equipment															X	X	C			4

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Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC
Manufactured Housing and Wood Buildings															X	X	C			4
Medical, Dental and Surgical Equipment															X	X	C			4
Millwork, Plywood and Veneer															X	X	C			4
Optical Goods												*		e	X	X	C			4
Paperboard Containers and Boxes																X				4
Pharmaceutical Products															X	X	C			4
Photographic Equipment and Supplies															X	X	C			4
Plastic Products															X	X	C			4
Pottery and Related Products															X	X	C			4
Rubber Products																X				4
Sawmill																S				5
Sign manufacture, fabricating												*		e	X	X	C			4
Soaps and Cosmetics																X				4
Textile Products (no dyeing and finishing)															X	X	C			4
Textile Products (with dyeing and finishing)																X				4
Massage Therapy, practitioner licensed by the State of NC									X	C	X	X	X	C	X		C	C	C	2
Medical, Dental or Related Office									X	C	X	X	X	C	X		C	C	C	2
Medical or Dental Laboratory									X	C		X	X	C	X		C	C	C	3
Motion Picture Production												*		C	X	X	C			4
Municipal Facilities	S	S	S	S	S	C	S	S	X	C	X	X	X	C	S	S	C	C	C	3
Museum or Art Gallery									X	C	X	X	X	C	X		C	C	C	2
Night clubs, dance halls (see note 4)												*	*	C	X		C	C	C	3
Nursing Home, Rest Home, Convalescent Home	S	S	S	S	S	C	X	X	SX	C	S	X		C				C	C	3
Park, Public	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3

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Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-1	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-1	C-MXR	C-MXC	LUC
Parking lots serving uses permitted in the district where located, See Note 11	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3
Parking lots or access driveways serving uses not permitted in district where lot is located			S	S	S	C		S	S	C	S	S	S	C	S	S	C	C	C	4
Pet Store/Grooming No Outside Animal Storage/Care											X	X	X	C	X		C		C	3
Petroleum and Petroleum Products Storage/Sales, <100,000 gallons											S			C	X	X	C			4
Petroleum and Petroleum Products Storage/Sales, >100,000 gallons																X	C			5
Photography Studio											X	X	X	C	X		C	C	C	3
Physical Fitness Center, Health Club, Gym									X	C		X	X	C	X		C	C	C	3
Planned Unit Development (PUD)	O	O	O	O	O		O	O	O		O	O	O		O	O				3
Post Office											X	X	X	C	X		C	C	C	4
Printing and Publishing Operation/Photocopying												X	X	C	X	X	C		C	3
Public utility warehouses, storage yards, repair areas															X	X	C			4
Racetracks for automobiles, motorcycles															S	S				5
Radio, Television Stations without Towers											X	X	X	C	X	X	C		C	3
Recycling Facility, Commercial															S	S				4
Restaurant (with drive-thru)											X			C	X	X	C		C	3
Restaurant (without drive-thru)											X	X		C	X		C		C	3
Retail Sales No Outside Storage or Sales											SX	X	X	C	X		C	C	C	3
Roadside stands, temporary, for sale of agricultural products produced on premises; not in right-of-way	X							X	X	C	X	X	X	C	X	X	C	C	C	1
Sewage Treatment Plant,																S				5
School, Elementary or Secondary	S	S	S	S	S	C	S	S	SX	C	SX	SX		C	X		C	C	C	42

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Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-1	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-1	C-MXR	C-MXC	LUC
School, commercial, vocational									SX	C	SX	XX	XS	C	XX	XX	C	C	C	12
School, music, art, martial arts, or dancing									X	C	X	X	X	C	X		C	C	C	1
Septic Tank Installation and Servicing Businesses															X	X	C			3
Sexually Oriented Business												S			S	S				5
Shooting Range, Indoor															X	X	C			3
Shooting Range, Outdoor																S				45
Solar Farm (See Note 24)						€				€				€	X	X	C	€	€	24
Stable, including riding facilities	SX														SX	SX	C			1
Storage Yard, See Note 13															X	X	C			5
Tanning Salon									X	€	X	X	X	C				C	C	3
Tattoo Business												X			X	X				3
Taxidermist												X		C	X	X	C		€	3
Temporary Construction or Real Estate Office, Storage Facilities – use to be terminated upon completion of construction	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	n/a
Theater (indoor)												X	X	C	X		C	C	C	3
Tire Recapping and Retreading (Principal use)															X	X	C			3
Tire Sales												X		C	X		C		C	3
Towers, Radio, Television, Cellular and Digital Communication															S	S	C			5
Truck and Utility Trailer Rental and Leasing												X		C	X	X	C			4
Trucking or Freight Terminal, Storage, Repair, Wash, or Stop															S	S	C			4
Unattended facilities for public utilities, See Note 16	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	2
Utility building sales, sales of storage sheds and trailers												X			X	X	C			4
Unified Business Development, Heavy									S	€		S	S	€	S	S	C	€	€	34

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Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-1	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-1	C-MXR	C-MXC	LUC
Unified Business Development, Light									*	Ⓢ		X	*	C	X		C	C	C	3
Utility Substation, See Note 17	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	2
Veterinary Service, Large Animal	X														X	X	X			2
Warehouse (general storage, enclosed, non-hazardous)															X	X	C			4
Warehouse, Mini (self-storage)												Ⓢ		Ⓢ	X	X	C			3
Waste Incinerators (including Medical)																Ⓢ				5
Water Treatment Plant															X	X	C			5
Wholesale Distribution and Trade Not Otherwise Listed												X		Ⓢ	X	X	C			3

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Section 10.136

Notes to the Table of Permitted Uses

1. **Accessory Uses in Residential Districts** - Accessory uses in residential districts such as garages, utility buildings are restricted to rear yards or side yards unless the required setback can be maintained. For a noncommercial greenhouse that is an accessory use, the heating plant for the greenhouse must be located within 60 feet of the front property line or within 10 feet of any other property line. In addition, in the R-18 district, one private stable on a lot at least 20,000 square feet in area is permitted, provided the stable is located at least 60 feet from the front property line and not less than 10 feet from any other property line.

On lots occupied by multifamily dwellings, the following accessory buildings shall be permitted, provided their exteriors harmonize with the multifamily structures.

- a. Garages, located as required in section *Table of Area, Height, and Yard Regulations*.
 - b. Coin laundries, offices, and recreational buildings to serve residents of the multifamily development, provided they do not intrude into any minimum required yard.
 - c. Equipment storage buildings located as required in section *Table of Area, Height, and Yard Regulations*.
2. **Athletic Fields, Auditoriums, Stadiums** - All athletic fields shall have access to a collector or higher capacity street.
 3. **Automotive Towing Service** - The auto towing area must be screened with a six-foot high opaque fence in addition to the required planting yard. No outdoor storage or salvaging is permitted.
 4. **Bars, Night Clubs, Dance Halls (as a principle use)** – All locations must meet the requirements of NCSS 18B-901, Issuance of [ABC] permits. Where the property on which a bar is located abuts residential property, screening including a minimum six-foot high opaque fence along the entire length of the property of the abutting residence(s). The main entrance of the building shall be toward a street zoned predominantly for nonresidential uses. Parking areas related to the establishment shall be located no closer than 30 feet to the property line of abutting residences. *(Amended by City council on 10/7/03, 5/5/2016)*
 5. **Batting Cages (outdoor); Golf Driving Ranges** - Fencing, netting, or other control measures shall be provided around the perimeter of the batting or driving area to prevent balls from leaving the area.
 6. **Building Supply Sales, Equipment Rental and Leasing (with storage yard)** - Outside storage shall be completely screened from view with opaque fencing.
 7. **Car Wash** - Building(s) shall be at least 75 feet from any property line which adjoins residential or office-institutional zoned property. A minimum six-foot high opaque fence shall be provided adjacent to all residentially zoned property. Hours of operation shall be between 8:00 a.m. and 8:00 p.m. when adjoining developed residentially zoned property. Adequate provision shall be made for safe and efficient disposal of waste and runoff. Additionally, the following provisions shall be met:

1. No flashing lights or fluttering devices designed and used to attract attention shall be permitted.



2. No outdoor storage of any equipment, merchandise, or rubbish shall be permitted.
3. All floodlights shall be turned off at the close of business or at 11:06 p.m., whichever is earlier.
4. No lights shall be so arranged as to direct or reflect light into any residence.
5. No curb cut shall be less than 25 feet from the intersection of any two street curb lines. Curb cuts shall not be wider than 25 feet. No more than two curb cuts shall be permitted on each abutting street.
6. An opaque screen at least eight feet in height shall be provided along each property line adjoining a district zoned residential.



8. **Cemetery/Mausoleum** – A cemetery or mausoleum as a principal use shall comply with state law requirements for minimum contiguous acres. Principal access must be from a collector street or higher capacity street.
9. [Reserved]
10. **Machine Shop** - In I-1, no punch presses over 20 tons rated capacity, drop hammers or automatic screw machines are permitted.
11. **Parking Lots Serving Uses Permitted in the District Where Located** - A special use permit is required for a parking lot in a residential district when it serves a non-residential establishment.
12. **Satellite Dish (Freestanding Accessory Use)** - All supporting cables and anchors shall be contained on the property where the satellite dish or tower is located. In residential districts, structures larger than 24 inches in diameter can only be placed in a rear yard or side yard behind the building lot line. Structures less than 24 inches in diameter are not subject to these restrictions.
13. **Storage Yard** - Outside storage is permitted as a principal or accessory use if completely enclosed by opaque fencing at least six feet high.
14. **Swimming Pools (community nonprofit)** - Minimum fence height six feet, made of chain link with wood slats, chain link with a planted border at least five feet in height, or other opaque materials. All N.C. Division of Health regulations to be followed.
15. **Swimming Pools (as accessory uses)** - Pools and appurtenances shall be located in the rear or side yard and may not be located within five feet of interior rear or side lot lines. Pools which are not an integral part of the principal building shall be located a minimum of ten feet from the principal building. *(Section 10.136(15) amended by City council on 5/1/2012)*
16. **Unattended facilities for public utilities** - Unattended facilities for public utilities shall be added to all use districts under the following conditions:
 - a. The structure shall be used only for housing electronic equipment (no storage). These structures shall have no water and sewer facilities. The maximum size shall be 12 feet by 20 feet by 8 feet high.
 - b. Dimensional requirements: minimum setback 20 feet; side and rear yards 15 feet; minimum lot area 3,000 square feet; minimum lot width 50 feet.
 - c. All utilities shall be placed underground.
 - d. The site shall be landscaped in character with the surrounding neighborhood. The structure shall be screened with suitable evergreens. Natural ground cover should be left on the site where possible.
 - e. Two off-street parking spaces and ample turnaround area shall be provided.
 - f. Detailed site and landscape plans shall be submitted to the City.



17. **Utility Substations Including Transformer Stations, Pump and Lift Stations, etc.** - The entire facility shall have a security fence at least six feet high unless it is secured and is built of brick or concrete. If the installation abuts a residence, it must be at least 50 feet from the residence and screened from the residence with a thick buffer of evergreen shrubbery or trees, which will grow at least six feet tall. Equipment producing noise in excess of 70 decibels shall be located no closer than 100 feet from the nearest residence.

18. **Development Standards for Multifamily Developments in R-MF and R-G, Site Plans Required**

- (1) Lot Coverage - The total ground area covered by the buildings and all accessory buildings including any roofed area, shall not exceed 40 percent of the total lot area.
- (2) Open Space
 - (i) Usable open space. A minimum of 10 percent of the total land area of any lot containing three or more dwelling units shall be usable open space, as defined in Article II - Definitions. On lots where the required usable open space is less than 20,000 square feet, such space should be approximately square but in no case shall the length of such required space be more than twice its average width. On lots where the required usable open space is 20,000 square feet or more, the minimum dimension of such space shall be at least 100 feet, and the minimum size space allowable as meeting a part of the required usable open space shall be 20,000 square feet.
 - (ii) Private usable open space. The total usable open space as required in subparagraph (a) immediately above may be reduced by 50 percent if a minimum of 500 square feet of private usable open space is provided for each dwelling unit. Such space shall be directly accessible and adjacent to the dwelling unit it serves, and shall be so arranged and screened to prevent public traffic through such space and provide reasonable privacy from public view. Such space shall be suitable for recreational activity and shall be unobstructed except for plants, lawn furniture, and play equipment. Private terraces and walkways may be included in such open space. Parking areas, vehicle drives, and storage areas shall not be included in such open space. The minimum dimension of any such private open space shall be at least 15 feet.
- (3) Separate Zoning Lot - A multifamily dwelling shall not be placed behind and on the same zoning lot as a single-family detached dwelling.
- (4) Access to Fire protection - To permit adequate fire protection, all portions of every building shall be located within 500 feet of a public street that furnishes direct access to the property unless the fire chief determines that fire hydrants and service drives will offer adequate protection.
- (5) Traffic Circulation - All common driveways shall have approved traffic circulation and shall be kept available for emergency and service use by any public vehicle.
- (6) Parking Access - Off-street parking spaces shall be located within 200 feet of each building in an amount proportional to the number of dwelling units in each building. No parking area with five or more spaces shall be located closer than 10 feet to a dwelling wall with windows or doors.



(7) Screening of utility areas. Utility areas such as clothes drying yards and outdoor storage areas in multifamily developments shall be provided with an opaque screen along any side of such areas which would be visible from a public street or adjoining residentially, zoned properties. No such utility areas shall be located in the area between a building and a street bordering the development. Screens are not to be brightly colored multicolored, or otherwise obtrusive; colors and textures harmonious with nature and nearby residential structures are recommended.

(8) Required site plan. 10 site plans shall be submitted with the following information:

- i. Vicinity map showing the location of the property in relation to existing and proposed streets, streams, railroads and other major physical features.
- ii. Location, size and type of all buildings, existing and proposed, on or near the property.
- iii. Grading plan.
- iv. Proposed points of vehicle ingress and egress, together with the proposed pattern of internal circulation.
- v. Proposed parking and loading areas.
- vi. Landscape plan prepared according to the Graham Landscape Ordinance.
- vii. Proposed provision of utilities.
- viii. Location, size, height, orientation and lighting information on all signs.
- ix. Layout and orientation of all buildings.

19. Performance Standards for All Uses in the I-1 and I-2 Zoning Districts

In order to retain a character consistent with the description of the I-1 and I-2 zoning districts, the following performance standards will be applied for all uses in the districts:

- a. *Dust, dirt, fly ash or other air pollutants.* There shall be no emission of dust, dirt, fly ash, gases, fumes, vapors or other air pollutants into the atmosphere that could cause damage to the public health, or to animals, vegetation, or other forms of property.
- b. *Electrical interference.* There shall be no electrical disturbances affecting the operation of any equipment other than that of the creator of such disturbances.
- c. *Heat and glare.* There shall be no heat or glare perceptible to human senses at the property line of any use creating heat or glare.
- d. *Landscaping.* See landscaping requirements on File in the office of the City clerk and inspection department.
- e. *Enclosure.* All processing shall be within a building.



- f. *Liquid or solid waste.* There shall be no discharge of any liquid or solid waste into any stream except as authorized by the State of North Carolina.
- g. *Noise.* The sound-pressure level of sound radiated from an establishment, measured at the lot line, shall not exceed the values in any octave band of frequency that are specified in the table below. The sound-pressure level shall be measured with a sound level meter and an associated octave band analyzer conforming to standards prescribed by the American Standards Association.

<i>Frequency Band (cycles per second)</i>	<i>Decibels</i>
20- 75	69
75- 150	57
150- 300	52
300- 600	46
600- 1200	42
1200- 2400	37
2400- 4800	33
4800-10,000	30

- h. *Odor* There shall be no objectionable odors perceptible to the human senses at or beyond the property line of any use that may create odors.
- i. *Radioactivity.* There shall be no radioactive emission that would be dangerous to health.
- j. *Smoke.* There shall be no emission into the atmosphere of smoke from any operation of a shade darker than Number one on the Ringelmann Smoke Chart as published by the United States Bureau of Mines, except that smoke of a shade not darker than No. 3 on said chart may be emitted for not more than 2 minutes in any thirty-minute period.
- k. *Traffic* There shall be no industrial vehicular traffic on any minor residential street.
- l. *Vibration.* There shall be no vibration perceptible to human senses at the property line of any use that may create vibration.

20. **Day Care Center, Child, operated as home occupation (5 or less)** – Centers shall meet the standards established by the North Carolina Department of Health and Human Services. At least 200 square feet per child of completely enclosed fenced outside play area, not including drives, parking areas or land otherwise unsuitable, shall be provided. *(Section 10.136(20) amended 9/2/2003)*

21. **Family Care Facility** – A Family Care Facility (Family Care Home) shall not be located within a one-half mile radius of an existing Family Care Facility (Family Care Home). An “Existing Family Care Facility (Family Care Home)” for the purposes of this section shall mean one that has obtained a 180-day zoning compliance letter. *(Section 10.136(21) amended 6/3/2008)*

22. **Farmer’s Markets, as accessory uses** – Farmer’s Markets as accessory uses in the B-2, B-3 districts and churches are subject to parking requirements in Section 10.242. Vendors are responsible for obtaining all licenses and permits required for sale of their product. *(Section 10.136(22) amended 9/1/2009)*



23. Group Care Facilities and Group Homes, Development Standards – Off-street parking, as required by Section 10.240, shall be located to the side and/or rear of the building. Group Care Facilities and Group Homes should be located in areas where employment, goods and services can readily be reached by a variety of means of transportation. Access to transit, a sidewalk network and/or close proximity to employment, goods, and services are encouraged for approval of a special use permit unless the applicant can satisfactorily demonstrate that the intended residents of the group home or facility do not require this service. For halfway houses, there shall be on-site supervision at all times by persons employed by or volunteers trained by the agency operating the halfway house. Rules of conduct shall be established and enforced by the agency operating a halfway house. These rules shall prohibit the use or possession of drugs, alcohol or weapons, as well as disorderly conduct. *(Section 10.136(23) added 1/8/2013)*

24. Solar Farms – Power inverters and other sound producing equipment shall be no less than 150' from any property line. All solar farms shall be enclosed with a minimum of six feet high security fencing. Solar farms shall be constructed with at least a Type C planting yard, and shall abide by higher requirements when applicable. The height of no panel can exceed fifteen feet. A setback of 100 feet is required for any installation adjacent to a residential use or a residentially zoned parcel. Prior to final approval of the electrical permit, a Decommissioning Plan (see definitions) shall be submitted to the City. *(added 2/2/2016)*

25. Warehouse, Mini (self-storage) –

- Lot size: Between two acres (minimum) and five acres (maximum).
- Maximum Height: 20 feet, not exceeding one story.
- Storage: No outside storage is permitted.
Storage of hazardous, toxic or explosive substances is prohibited.
- Operation: No business activity other than the rental of storage units shall be conducted on the premises.
One dwelling unit shall be allowed on the same lot for use as a caretaker dwelling.
- Lighting: Lights shall be arranged so that no light or glare is directed into a residence.
- Screening: An opaque screen at least eight feet high shall be provided along each property line adjoining a residentially zoned district.
- Buffer: When the property is adjacent to the interstate right of way, a 50-foot-deep opaque undisturbed buffer shall be maintained. If the land has been previously cleared or the buffer area will not be opaque, supplemental evergreen trees 6 feet tall at time of planting shall be planted every 10 feet on center to achieve the desired screening. If the property does not have 50 feet of depth, the buffer shall be equal to $\frac{1}{4}$ the total depth of the lot.



DIVISION 7. SPECIAL USES

Section 10.137 Purpose of special use regulations

Permitting special uses adds flexibility to the Zoning Ordinance. Subject to high standards of planning and design, certain property uses are allowed in districts where these uses would not otherwise be acceptable. By means of controls exercised through the Special Use Permit procedure, property uses that would otherwise be undesirable in certain districts can be developed to minimize any undesirable effects they may have on surrounding properties.

Section 10.138 Special uses shown in Table of Permitted Uses

Each use for which a special use permit is required is indicated in the Table of Permitted Uses, by an "S" in the column for a particular zoning district. The "S" indicates that such use may be placed in that zoning district only after a special use permit has been approved by the City council and issued by the zoning enforcement officer.

Section 10.139 Application for a Special Use Permit

Applicants for a special use permit are advised to confer with the Planner before formal application for a permit in order to ascertain what information must accompany the formal application. Applications for special use permits shall be submitted to the Planner. Depending on the character and size of the proposed use, a plot plan or a preliminary site plan may be required showing any or all of the following information, in addition to the specific conditions set forth under each special use:



- a. Vicinity map, showing the location of the property in relation to existing and proposed streets, streams, railroads and other major physical features.
- b. Location, size and type of all buildings, existing and proposed, on or near the property.
- c. Grading plan.
- d. Proposed points of vehicle ingress and egress, together with the proposed pattern of internal circulation.
- e. Proposed parking and loading areas.
- f. Landscape plan, showing the number, location, size and name of each plant species; and the proposed ground cover, especially on slopes, banks, and ditches. If the special use permit is approved, the landscape plan shall be carried out within one year of the date of issuance of the certificate of occupancy; landscaping shall be permanently maintained thereafter.
- g. Proposed provision for utilities.
- h. Location, size, height, orientation, and lighting information on all signs.

Section 10.140 Timing of Submissions

The applicant must submit the required plans and request for a special use permit on or before the 25th day of the month preceding the planning board meeting at which consideration is desired.

Section 10.141 Role of Planning Board

The planning board shall review applications for special use permits, together with accompanying plans, maps, and drawings. The planning board may recommend that the City council (1) deny the special use permit, or (2) approve the special use permit subject to the conditions for individual special uses, or (3) approve the special use permit subject to the conditions for individual special uses and other reasonable conditions recommended by the Planning board. The Planning board may also recommend modifications of the original plans.

Section 10.142 Role of Historic Resources Commission

As provided for in Section 10.205, the Historic Resources Commission is authorized to review and comment on special use applications for proposed uses within any historic district or historic landmark. Recommendations and comments from the commission shall be relayed directly to the City council for consideration along with the Planning board's recommendations.

Section 10.143 Role of City Council

For each application for a special use permit the City council shall hold a public hearing, notice of which shall be published in the same manner as required for a hearing on an amendment to this article. When deciding a special use permit, the City council shall follow quasi-judicial procedures as required by law. At the public hearing the City council shall review the application for a special use permit, together with accompanying plans, maps, and drawings. Recommendations of the planning board shall be heard. The



City council may (1) deny the special use permit, or (2) grant the special use permit subject to the conditions for individual special uses, or (3) grant the special use permit subject to the conditions specified for each use listed in Section 10.149 (Special uses listed) and to other reasonable conditions the council imposes upon the permit. Subject to S.L 2019-111, Pt. I, the City council shall not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. The Council shall obtain the applicant or land owner's written consent to conditions related to a special use permit to ensure enforceability. There shall be competent, material and substantial evidence in the record to support the Council's findings of facts and conclusions. No vote greater than a majority vote shall be required for the City council to issue special use permits. Vacant positions on the City council and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the City council" for calculation of the requisite majority.

(Section 10.143 amended 7/11/2006)

Section 10.144 Findings

In granting a special use permit, the council shall find that all of the conditions listed below have been met, or it shall be denied.

- (1) That all applicable regulations of the zoning district in which the use is proposed are complied with.
- (2) That conditions specific to each use, identified by this Ordinance are complied with.
- (3) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.
- (4) That the use will not substantially injure the value of adjoining property or that the use is a public necessity.
- (5) That the location and character of the use if developed according to the plan as submitted will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the Graham planning area.
- (6) That satisfactory provision has been made for the following, when applicable: vehicle circulation, parking and loading, service entrances and areas, screening, utilities, signs and lighting, and open space.

Section 10.145 Conditions added by Council, Limitations

In granting a Special Use Permit, the Council may designate only those conditions, in addition to those already contained in this ordinance or proposed by the applicant, that will, in its opinion, assure that the use in its proposed location will be harmonious with the area. Examples of such additional conditions include landscaping or buffer provisions, conditions related to on-premises signage, conditions to reduce traffic congestion and other conditions directly related to the land use impact of the use on the area. The City council may modify the original plans to reflect such conditions which shall be entered into the minutes of the meeting at which the permit is granted.



Section 10.146 Conditions run with land

All special use conditions shall run with the land and shall be binding on the original applicants, their heirs, successors and assigns. In voting on a request for a special use permit, a vote by the majority of the City council membership shall be required to grant the request.

Section 10.147 Appeal

No appeal may be taken to the board of adjustment from the action of the City council in granting or denying a special use permit. The City council's action on an application for a special use permit, like the council's action on an application for an amendment to the ordinance, shall be reviewable by the courts as provided by law.

Section 10.148 Invalidation

In the event of failure to comply with the plans approved by the City council or with any other condition imposed by the City council upon the special use permit, the permit shall immediately become void and of no effect. No further building permits or certificates of occupancy shall be issued, and completed structures shall be regarded as nonconforming uses. A special use permit shall become null and void 24 months after the date of its issuance unless construction is begun during the twenty-four-month period.

Section 10.149 Special uses listed

The special uses listed on the following pages shall be permitted only after approval according to the process outlined in the preceding sections, and after the required findings have been made. All conditions specified for the individual uses, in addition to any conditions added by the council shall be complied with. Special use permits shall only be granted for uses specified in this ordinance.

(Section 10.149 amended 4/2/2002, 8/6/2002, 10/1/2002, 10/7/2003, 5/4/2004, 8/6/2013, 11/5/2013, 2/4/2014)

Use: Adult Establishment/Sexually Oriented Business

Special Use Districts: B-2 and I-1

Definition: See Sexually Oriented Business in Section 10.16, Definitions

Setbacks:

1. No sexually oriented business shall be located closer than 1000 feet to another adult establishment.
2. No sexually oriented business shall be located closer than 1000 feet to a residence or residentially zoned district.
3. No sexually oriented business shall be located closer than 1000 feet to a public or private elementary or secondary school, child day care center or nursery school, public park, church, or community college.
4. No sexually oriented business shall be located closer than 500 feet from a bar or night club.



All measurements shall be made by drawing straight lines from the nearest point of the lot line where the proposed adult establishment is to be located to the nearest point of the lot line or boundary of the closest adult establishment, residence, residentially zoned district, public or private elementary or secondary school, child day care center or nursery school, public park, church, community college, bar, or night club.

Other Restrictions:

1. There shall not be more than one (1) sexually oriented business in the same building, structure, or portion thereof. Additionally, no other principal or accessory use may occupy the same building, structure, property, or portion thereof with any sexually oriented business.
2. Flashing lights or fluttering devices designed and used to attract attention are not permitted.
3. Sound amplification shall not be directed outside any building or structure occupied by a sexually oriented business.

Additional Information to Be Provided by Applicant: In addition to information normally provided in the course of applying for a special use permit, the applicant shall provide:

1. His/her name, address, and age, or if a partnership, the names, addresses, and ages of the persons who constitute such partnership, or if a corporation, the names, addresses, and ages of its directors, officers, and principal stockholders. Each application shall also include the names, ages, and addresses of all present employees.
2. A complete statement of all convictions of any person whose name is required to be given in Number 1 above for any crime other than traffic violations.

Action by City

1. The City staff shall be given 30 days from receipt of a completed application form to verify the information contained in the application prior to any further steps being taken, including placing the application on the Planning board agenda.
2. The City staff shall verify that the applicant, or any person having a legal or beneficial interest in the establishment, or any employee, has not been convicted of any crime involving sexual misconduct, including -but not limited to, N.C.G.S. 14-177-14-202.1, 14-203 -14-208, or any local, state, or federal law related to racketeering or the possession, sale, or distribution of a controlled substance.
3. No permit shall be issued to an applicant whose information reveals anyone with a legal or beneficial interest or an employee having a record of conviction of a crime.

Revocation of Special Use Permit:

Failure to comply with the conditions of a special use permit is a violation of this ordinance. In addition, as provided in Section 10.148, failure to carry out any conditions relating to a special use permit shall be cause for the revocation of the permit. Failures of compliance include but are not limited to: misstatements of fact contained in an application discovered after issuance of the permit; the applicant's allowing persons or corporations to own an interest in or be employed by the business after



issuance of the permit whose ownership or employment would have originally prevented issuance of the permit; violation of a zoning, building, or fire prevention ordinance by the permittee.

Use: Condominiums

Special Use Districts: R-12, R-9 and R-7

1. A preliminary site plan shall be submitted.
2. The dimensional requirements for multifamily developments shall apply.
3. The off-street parking requirements for multifamily developments shall apply.



Use: **Electronic, Internet or Sweepstakes Gaming.**

Special Use Districts: **I-2, and also permitted in this district only if part of a unified business development**

Setbacks:

1. No Electronic, Internet or Sweepstakes Gaming establishment shall be located closer than 1000 feet to another Electronic, Internet or Sweepstakes Gaming establishment.
2. No Electronic, Internet or Sweepstakes Gaming establishment shall be located closer than 1000 feet to a public or private elementary or secondary school, child day care center or nursery school, public park, church, or community college.
3. No Electronic, Internet or Sweepstakes Gaming establishment shall be located closer than 500 feet from a bar or night club.

All measurements shall be made by drawing straight lines from the nearest point of the lot line where the proposed Electronic, Internet or Sweepstakes Gaming establishment is to be located to the nearest point of the lot line or boundary of the closest Electronic, Internet or Sweepstakes Gaming establishment, residence, residentially zoned district, public or private elementary or secondary school, child day care center or nursery school, public park, church, community college, bar, or night club.

Other Restrictions:

1. There shall not be more than one (1) Electronic, Internet or Sweepstakes Gaming establishment in the same building, structure, or portion thereof. Additionally, no other principal or accessory use may occupy the same building, structure, property, or portion thereof with any Electronic, Internet or Sweepstakes Gaming establishment.
2. Flashing lights or fluttering devices designed and used to attract attention are not permitted.
3. Sound amplification shall not be directed outside any building or structure occupied by an Electronic, Internet or Sweepstakes Gaming establishment.
4. Alcohol may not be consumed or sold on any premises with Internet or Sweepstakes Gaming.
1. Any building and/or zoning permits issued for the Internet or Sweepstakes Gaming operation shall be subject to annual review to ensure compliance with all relevant regulations and conditions.
2. No person under the age of eighteen (18) will be allowed in the establishment, and age must be verified for each customer at the time of entry into the establishment.

City's Review of Special Use Permit Application

1. The City staff shall be given 30 days from receipt of a properly completed application to verify the information contained in the application before further steps are taken. The staff shall verify that:
 - a. The application must contain no misstatement of fact.



- b. The applicant has not been convicted of a felony within the past three years, and if convicted of a felony before then, has had citizenship restored.
- c. The proposed site meets building and fire prevention codes and the property complies with zoning requirements.

Revocation: A special use permit issued pursuant to this section may be evoked by action of the council it finds that:

1. A misstatement of fact contained in the application is discovered after issuance of the permit.
2. The permittee has violated or allowed to be violated any provision of this subsection.
3. The permittee violates any zoning, building, or fire prevention ordinance.
4. The permittee operates any unlawful game of chance at which any money, property or other thing of value is bet, whether the same be in stake or not, including but not limited to: "numbers", "tickets", Pyramid and chain schemes, faro bank and tables, punchboards, slot machines, vending machines, or game tables.

Use: **Golf, swimming or tennis lodge or clubs**

Special Use Districts: **R-18, R-15, R-12, R-9, R-7, R-MF, R-G, O-I, B-2, I-1, and I-2**

Development Standards

1. Every green shall be at least 150 feet from a property line.
2. Tennis courts shall be at least 75 feet from interior lot lines.
3. Buildings and swimming pools shall be at least 100 feet from interior lot lines.
4. Lighting shall be so shielded as to cast no direct light upon adjacent property.
5. Public address systems and sound amplification shall be contained within buildings.



6. Music that is audible at the property lines of adjacent residential property shall not be permitted.

Use: **Manufactured Home Parks**

Special Use Districts: **R-G**

Manufactured home parks shall be permitted as a special use upon evidence that a desirable environment for family living will result. To this end, consideration will be given to amenities of the site plan such as the degree of privacy afforded to each unit, protection from adjacent commercial and industrial activities, recreational facilities, landscaping and avoidance of traffic congestion.

Classification of Units Permitted: Class AA, A or B manufactured homes are permitted in parks. Consistent with the definitions of Class AA, A and B manufactured homes, units in manufactured home parks shall be set up in accordance with standards established by the N.C. Department of Insurance. All removable hitches shall be removed.

Minimum Area: Six acres. The site may be divided by a public street, provided that each adjacent portion of the site shall contain at least two acres, and the average horizontal dimension shall be at least 120 feet.



Setback of Park: Each boundary of the park must be at least 200 feet from any permanent residential building located outside the park unless separated by a natural or artificial barrier.

Buffer: A greenbelt planting strip, at least 20 feet wide shall be located along all perimeter boundaries of the manufactured home park not bordering a public street. The greenbelt shall include an opaque screen. No manufactured home or other structure and no driveway shall be located in the buffer.

Development Standards:

1. Minimum dimensions of sites:
 - 7,000 square feet area for each area
 - 50 feet width for each site
 - 20-foot setback for each unit from a private driveway or public street
 - 15-foot side yard along each side of every site
 - 20-foot rear yard, but not required where site abuts a greenbelt on rear
2. Placement of Units: Placing manufactured homes side by side with their long axles parallel should be avoided unless the distances between them are substantially increased above the minimums specified herein.
3. Parking: A minimum of two spaces per lot shall be provided
4. Roads: All spaces shall abut upon a paved roadway at least 20 feet wide. Specifications for pavement shall be the same as for City-maintained streets. Roads shall have unobstructed access to a public street, alley or highway. The City will inspect roads during roadway construction to assure that paving standards are met.
5. Walkways: Walkways at least three feet wide shall be provided from the manufactured home spaces to the service buildings.
6. Drainage: The park shall be located on a well-drained site, properly graded to ensure rapid drainage and freedom from standing water.
7. Utilities: Electrical, telephone, cable television, and other utilities shall be constructed underground. Necessary easements of at least 10 feet must be provided. ElectricCity shall meet requirements in current edition of the National Electrical Code.
8. Recreation area: A minimum of 5,000 square feet of usable, developed recreation area shall be provided for every manufactured home park. The area shall be at least 100 square feet per manufactured home space. (Area must not be used for septic tank fields or contain features such as ditches that limit access and use.)
9. Lighting of roads and walkways: All roadways and walkways within a park shall be hard-surfaced and lighted at night with electric lamps of not less than 100 watts each, spaced at intervals of no more than 100 feet, or equivalent lighting as approved by the City. Such lighting shall be the responsibility of the park owner.
10. Water, sewer: Manufactured home parks shall provide City water and sewer to all facilities and to each manufactured home space. A single meter shall be provided for the entire park.



11. Garbage receptacles: The park owner shall provide for adequate, regular methods of waste disposal and collection. Either sanitary bulk containers (dumpsters) or individual garbage containers for each space may be used. If individual garbage containers are provided, private waste collection companies are allowed to enter the park to collect waste at each space. If bulk containers are provided, they must be located within 300 feet of each manufactured home space. The bulk container shall be kept in a sanitary condition at all times.
12. Register: The operator of a manufactured home park shall keep a register containing the names of all occupants, the date of arrival and the license number of the automobile and manufactured home. The register shall be available at all reasonable times for inspections by representatives of the City.
13. Accessory Buildings: Permitted accessory buildings include:
 - Coin laundries, offices, and recreational buildings to serve residents of the manufactured home park only, provided they are not within 50 feet of any manufactured home and do not intrude into any required yard.
 - Equipment storage buildings located as required in the Table of Area, Height, and Yard Regulations
 - An administrative office.
 - a. Accessory service buildings shall be well lighted at all times of the day and night; shall be well ventilated, with screened openings; shall be constructed of such moisture-proof material, including painted woodwork, as shall permit repeated cleaning and washing; and shall be maintained at a temperature of at least 62 degrees Fahrenheit from October first through May first. The floors of service buildings shall be of water-impervious material.
 - b. No building shall be located closer than 30 feet to any manufactured home.
 - c. All service buildings and the grounds of the park shall be kept clean and free from any condition that will menace the health of any occupant or the public or constitute a nuisance.
 - d. Maintenance of service buildings shall be the responsibility of the owner of that manufactured home park
14. Fire protection: The park shall meet the most recently adopted standards for adequate fire protection established by the National Fire Protection Association.
15. Skirting: All manufactured homes moved into the City of Graham or its extraterritorial jurisdiction, shall be skirted. A time limit of up to sixty (60) days shall be granted to install skirting. After the sixty-day period, the building inspector shall inspect the skirting for compliance with this section. Skirting must be a noncorrosive, durable material such as vinyl or other suitable material approved by the building inspector. The color shall be in keeping with the color scheme of the manufactured home. All removable hitches shall be removed.

Preliminary Site Plan: In applying for a special use permit the developer of a manufactured home park shall submit plans and specifications showing compliance with the Development Standards listed above. The preliminary site plan shall include or show:



1. A legal description of the property shown and referenced to major streets and tax map number, drawn to scale, clearly showing the extent and area to be used for manufactured home park purposes.
2. The number, size and locations of all manufactured home spaces.
3. Location of underground water, sewer, and gas lines; electric and telephone wires
4. Location and specifications for water taps, sewage disposal connections and other facilities on each manufactured home space.
5. Location of all buildings, proposed or existing, in the area to be used as a manufactured home
6. Location of all roads, driveways and walkways serving the park and each space
7. The original and finished grade of the property.
8. The location by insert map showing true north.
9. A plan for providing fire protection and safety, where applicable.
10. A plan for providing fire protection and safety, where applicable.
11. Plans shall specify the method of garbage disposal

Approval must be obtained from the appropriate state and local agencies for construction of the systems if required.

Use: Manufactured home sales

Special Use Districts: I-1, I-2

Development Standards:

1. The site shall be at least one acre in size.
2. No manufactured home sales lot may be located closer than 5,000 feet to another manufactured home sales lot.
3. At least 60 percent of property shall be open land.
4. All setback requirements of the zoning district shall be observed.
5. No manufactured home shall be located closer than 20 feet to the nearest other manufactured home or structure.
6. Off-street parking shall be one parking space per two manufactured homes, minimum of five parking spaces.



7. No manufactured home sales lot shall be located in a flood zone area as shown on the City's FEMA maps.
8. Sales office must be constructed in order to comply with N.C. State Building Code, which includes modular construction, as defined by the North Carolina Department of Insurance.

Use: **Parking Lot or Driveway Serving a Use not Permitted in the District**

Special Use Districts: **R-12, R-9, R-7, R-G, O-I, B-3, B-2, B-1, I-1, and I-2**

Development Standards:

1. The parking lot shall adjoin or lie directly across the street from the property served.
2. The parking lot shall be paved with an all-weather surface.



3. Lighting shall be arranged so that direct or reflected light is not a nuisance to other properties.
4. The parking lot shall not extend more than 200 feet into a residential district unless a finding, described below, is made by the City council.

Findings by Council:

1. The City council shall permit nighttime parking only after a finding that nighttime use will not adversely affect nearby properties.
2. The City council shall permit extensions of parking lots more than 200 feet into a residential district only after a finding that extension to a specified greater distance will not adversely affect nearby properties.
3. An opaque screen shall be provided where the City council finds such a screen necessary to protect nearby property.

Use: **Recycling Processing Centers**

Special Use Districts: **I-1 and I-2**

Development Standards:

1. No recycling facility shall locate within a 500-foot radius of any residentially or office and institutionally zoned property.
2. No outside storage of materials is permitted
3. The facility shall be operated in a wholly enclosed building except that if the facility is adjacent to railway tracks, loading into a railway car may take place outside the building provided no materials remain on the loading area for more than 24 hours.

Use: **Telecommunications Towers (Cellular, PCS, Radio, TV, etc.)**

Special Use Districts: **I-1 and I-2**

Setback and Height Requirements:

1. Non-residential districts - The minimum distance from the base of the tower to the nearest property line shall be equal to or greater than the height of the tower. The City council shall have the option to waive this provision upon receiving documentation from the petitioner that the tower is engineered such that in the event of collapse, the tower will fall upon itself within the property boundaries upon which it is located. This option may require the establishment of a setback equivalent to a fall zone easement certified by a professional engineer registered in North Carolina. In any case, the minimum setback for a tower and all appurtenant structures shall be 25 feet from the nearest property line.
2. Proximity to right-of-way - No freestanding or guyed tower may be constructed closer than the tower's height from any public right-of-way.



Appurtenant Structures for Tower Operations:

An appurtenant structure constructed for the purpose of housing equipment related to tower operations may accompany each tower. Such structures shall be unmanned and be limited to 240 square feet of gross floor space for each tower and co-locator (e.g. 3 users on a tower equals three times 240 square feet for accessory structures). Setback for these structures shall be at least 15 feet from any property line.

Fencing and Screening:

1. The base of the tower, including but not limited to equipment and/or storage structures, along with any guy wires shall be enclosed by a commercial grade chain link fence (or fence of equal or greater quality) a minimum of eight feet in height.
2. A vegetative screen shall be planted around the security fencing consisting of at least two staggered rows of evergreen shrubs on five feet centers, at least five feet tall at the time of planting, unless existing vegetation or topography is determined to provide screening at least as effective as the planted screen.

Preliminary Site Plan:

The applicant shall present a preliminary site plan showing:

1. Siting and size of existing and proposed structures and descriptions of the color and nature of all exterior materials;
2. Existing trees and plantings as well as new plantings required for fencing and screening;
3. Existing and proposed topography at a contour interval of five feet;
4. Any officially designated floodways and floodplains;
5. Locations of access easements and parking areas.

Letters from Permitting and Regulatory Agencies

The applicant shall provide letters from all applicable government regulatory agencies such as the FCC, FAA and Burlington Airport Authority verifying that the agency's requirements have been met.

Power output and EMF Emissions:

The output for towers shall not exceed federally approved levels for exposure to electronic magnetic force. The petitioner shall also certify that the tower operations will not interfere with normal radio and television reception in the vicinity.

Tower Lights

Towers shall be provided with warning lights pursuant to FAA and FCC guidelines.

Minimum Distance between Towers:



Towers established pursuant to this ordinance and greater than 75 feet in height shall be located no closer than one mile from another tower greater than 75 feet in height. The council shall have the option to waive this provision if it is determined that a less objectionable site can be established at a closer location, or that other sites are not suitable for proper coverage.

Co-location:

1. Co-location of telecommunications operations on towers is encouraged to maximize use of towers and to reduce the number of towers serving the City and its environs. Co-location on a previously approved tower is permitted without an additional special use permit, provided all conditions of the previously approved permit are complied with. Co-location on a building or substantial structure such as a water tower or electric transmission tower is permitted without a special use permit. However, all applicable provisions of the zoning ordinance shall be met, and the authorized City official should review plans.
2. Towers less than 150 feet in height shall be adequately designed and of sufficient height to accommodate at least one additional user. Towers greater than 150 feet in height shall be designed to accommodate multiple additional users. The applicant for special use permit to construct a new tower shall submit plans indicating the intent to allow shared use of the tower, the number of shared users allowed, and how other users are to be accommodated. The applicant shall also present documentation that no suitable existing facilities within the coverage area are available to the applicant. Evidence may be in the form of maps, letters from adjacent tower owners, or calculations. Facilities include other towers, elevated tanks, or other structures. In addition, a professional engineer shall present documentation that the tower has sufficient structural integrity to accommodate more than one user.

Cessation in Use:

If the wireless telecommunications towers cease to be used for this purpose, then the tower owner shall dismantle and remove the tower and accessory structures from the site, within 120 days from the date the tower is taken out of service. The tower owner shall notify the Planner when any transmission tower is placed out of service. This Special Use Permit expires 120 days after the date that any transmission tower is taken out of service. Prior to final approval of the Electrical Permit, a Decommissioning Plan (see definitions) shall be approved by the City. *(amended 5/3/2016)*

Historic District:

Towers are not permitted in a designated historic district or on property on which a designated historic landmark is located. In addition, towers shall not be constructed within 350 feet of a designated historic district or an historic landmark. "Historic" means a district or landmark, which has been nominated, to the National Register of Historic Places.

Outside Storage:

Outside storage is not permitted on the tower site.



Use: Trucking or Freight Terminal, Truck Sales, Truck Storage, Repair, Wash, or Maintenance, and Truck Stop or Auto Plaza

Special Use Districts: B-2 (Vehicle sales and rentals only), I-1, and I-2

- 1) A traffic impact analysis/study, prepared by a qualified professional engineer registered to practice in North Carolina, shall be submitted with an application for a Special Use Permit. The purpose of the study is (a) to ensure that the proposed use does not adversely affect the transportation network, (b) to identify any traffic problems associated with access from the site to the existing transportation network, (c) to delineate solutions to potential problems, and (d) to present improvements to be incorporated into the proposed facility.
- 2) Where applicable, points of ingress and egress shall be shared between adjoining uses that are similar in nature to any road maintained by the City of Graham or the North Carolina Department of Transportation.

Use: Unified Business Development and Shopping Centers

Special Use Districts: Heavy (I-1, I-2 only); Light (permitted by right (B-2, I-1 only))

Description: A unified business development (UBD) consists of one or more principal structures or buildings, together with accessory structures or buildings, containing two or more stores, service establishments, offices, or other permitted uses. A development of this type is planned, organized, and managed to function as a unified whole and featuring all of the following: 1) common driveways, 2) common parking, 3) common signage, and 4) common landscaping plan. Examples are shopping centers, retail centers, office parks, and business parks having the characteristics listed above. Such unified business developments may include outparcels for lease or for sale, which may be intersected by public streets. Any such unified business development may be organized as a condominium or in a manner analogous to that of a townhouse development (with ownership of parcels beneath the building units and with parking and driveways being in common area owned and maintained by an Owners Association).

Condominium and Townhouse Unified Business Developments: Any unified business development that is proposed to be organized as a condominium or townhouse development must follow the procedures established for condominium and townhouse uses, as specified in Section 10.149. However, the provisions for Dimensional Requirements: Off-Street Parking and Loading Requirements in each of these sections shall not be used in the site plan layout, but will be based on the standards for the underlying zoning district. If a nonconforming building is converted into a condominium or townhouse



development, the Declaration and Final Plat shall disclose such nonconformity and explain potential consequences of such nonconformity in case of substantial damage to the building.

Access to Street or Thoroughfare: Such developments shall abut a major thoroughfare, minor arterial, or collector street (existing or proposed) as shown on the Burlington-Graham Thoroughfare Plan. Access to the street or thoroughfare shall be by mean of a service road, or direct access, keeping in mind the need to control congestion on and into the thoroughfare or street.

Administrative Approval: When the anticipated traffic load is less than 250 vehicles per day, the approval for this UBD may be treated as a “Unified Business Development, Light” and be considered use by right by the City Planner, or referred to Council as they so choose. However, if the traffic increases beyond this amount, or is anticipated to increase beyond this amount, the applicant must come before the City council to be approved, or the parcel must have only one use. *(added 5/3/2016)*

Uses to be Enclosed: Required Screening:

1. All uses shall be completely enclosed in buildings except for plant sales, sidewalk cafes, and permitted drive-in uses.
2. An opaque screen shall be provided wherever, in the City council's judgment, such screening is necessary to shield adjacent residential districts.

Uses Permitted in Unified Business District:

B-2 and I-1

1. All uses permitted in the B-2 District are permitted except for the following uses, which are not permitted: residential dwellings; animal hospital; automobile sales; car wash; amusements/water parks; bottling or dairy plant; commercial campgrounds; camping vehicle parks; contractor's storage yards (offices are permitted); day care centers (child and adult); farm equipment sales, storage and repair; funeral homes; golf courses (all types); hospitals; kennels; laundries, except self-service; lodges; manufactured home sales; nursing homes; plumbing shops; sign shop; stonecutting; monument manufacture and sales; tattoo business; tire recapping and retreading (principal use); truck sales; veterinarian; wholesale distributors.
2. Drive-in establishments offering goods or services directly to customers in parked cars shall be permitted only when the locations of buildings and access drives have been approved by the City council.
3. All business establishments shall be retail or service establishments dealing directly with the public.
4. Dry cleaning businesses are allowed with the following provisions: (a) No Hazardous Air Pollutants (HAPs), Resource Conservation and Recovery Act (RCRA) hazardous waste, or Occupational Safety & Health Administration (OSHA) labeled toxic substances allowed on premises and (b) no dry-cleaning chemical storage allowed on premises.



I-2: All uses permitted in the underlying district are allowed within the Heavy Industrial District. *(added 5/3/2016)*

Sections 10.150-10.159 Reserved

DIVISION 8. RESERVED

Section 10.160-10.184 Reserved *(Planned Unit Development removed 8/2/2016)*

DIVISION 9. HISTORIC DISTRICT OVERLAY ZONE

Section 10.185 Purpose

The Courthouse Square Historic District, referred to in this division as the "district," is one of the most valued and important assets of Graham. It is established for the purpose of protecting and conserving the heritage of Graham, Alamance County and the state; for the purpose of safeguarding the character and heritage of the district by preserving the district as a whole and any individual property therein that embodies important elements of its social, economic, cultural, political or architectural history; for the purpose of promoting the conservation of such district for the education, pleasure and enrichment of residents of the district and Graham, Alamance County, and the state as a whole; for the purpose of fostering civic beauty; and for the purpose of stabilizing and enhancing property values throughout the district as a whole, thus contributing to the improvement of the general health and welfare of Graham and the residents of the district.

Section 10.186 Historic District Overlay Zone Established

The Courthouse Square Historic District is hereby established as a district which overlaps and overlays existing zoning districts, the extent and boundaries of which are as indicated on the official zoning map.

Section 10.187 Uses Conform to Underlying District

The Courthouse Square Historic District overlays several zoning districts. All uses permitted in any such zoning district shall be permitted in the historic district according to the procedures established in this ordinance.

Section 10.188 Dimensions Conform to Underlying District, Exceptions

Dimensional requirements shall be the same as those for the underlying zoning districts, except that



Conformity to The Graham 2035 Comprehensive Plan and Other Adopted Plans

Applicable Planning District Policies and Recommendations

- Not applicable; city-wide.

<u>Planning District</u> All
<u>Development Type</u> All

Staff Recommendation:

Based on *The Graham 2035 Comprehensive Plan* and best practices, **staff recommends approval of the text amendment.** The following supports this recommendation:

Special uses are those uses that typically cannot be well categorized into a use by right classification due to their size, intensity, or unique characteristics. The proposed amendments better align with this definition.



STAFF REPORT

Prepared by Justin Snyder, Planning Director

Text Amendment for: Revision to Criminal Penalties

Type of Request: Text Amendment

Meeting Dates

Planning Board on November 16, 2021

City Council on December 14, 2021

Contact Information

N/A

Summary

The State of North Carolina recently passed the Criminal Reform Omnibus Bill (SB300). As part of this approval, the State has modified local jurisdictions' authority to assess

criminal penalties in the Development Ordinance with limited exceptions. As a result, the City staff in coordination with the City attorneys, have proposed the following as a simplified way of addressing the current deficiencies in our Ordinance.

Existing Language:

Section 10.43 Penalties

Misdemeanor. Violation of this ordinance shall constitute a misdemeanor, punishable as provided as G.S. 14-4.

Civil Penalty. Any violation of this ordinance shall also subject the offender to a civil penalty of \$100. If the offender fails to pay the penalty within 10 days of receiving final written notice of a violation, the penalty may be recovered by the City in a civil action in the nature of a debt. A civil penalty may not be appealed to the Board of adjustment if the offender received a final written notice of violation and did not appeal to the Board of adjustment within a reasonable time. Each day that any violation continues after receipt of the final written notice of such violation shall constitute a separate violation and a separate offense for purposes of the penalties and remedies specified herein.

Action to Abate or Restrain. In addition to the penalties and remedies above, the City may institute any appropriate action or proceedings to prevent, restrain, correct or abate a violation of this ordinance.

Section 10.44 Administration, enforcement generally

The zoning enforcement officer (ZEO) shall administer and enforce this article. The ZEO may be provided

Project Name

Criminal Penalties (AM2104)

Location

city-wide

Current Zoning

not applicable

Proposed Zoning

not applicable

Overlay District

not applicable

Staff Recommendation

Approval

with the assistance of such other persons as the City manager may direct. If the zoning enforcement officer shall find that any of the provisions of this article are being violated, they shall notify in writing the person responsible for such violation, indicating the nature of the violation and order the action necessary to correct that violation. Notices of Violation shall be provided in conformance with statutory procedures as described in 160D-404(a). The ZEO shall order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; or the discontinuance of any illegal work being done; and the ZEO shall take any other action authorized by this article to insure compliance with, or to prevent violation of, its provisions.

When the Zoning Enforcement Officer inspects a property, they must enter the premises during reasonable hours and upon presenting credentials; the ZEO must have consent of premises owner or an administrative inspection warrant to inspect areas not open to the public, as described in 160D-403(e).

SECTION 10.372 PENALTIES FOR VIOLATION

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Graham from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 10.521 Remedies and Penalties

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

a) Remedies

- (1) Withholding of Certificate of Occupancy. The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements

constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

- (2) Disapproval of Subsequent Permits and Development Approvals. As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Planning board of the City of Graham may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the Planning board of the City of Graham for the land on which the violation occurs.
 - (3) Injunction, Abatements, etc. The City council, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
 - (4) Correction as Public Health Nuisance, Costs as Lien, etc. If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the authorization of the City council, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
 - (5) Stop Work Order. The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.
- b) Civil Penalties. Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which the City of Graham is subject for violations of its Phase II Stormwater permit.
- c) Criminal Penalties. Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

Section 10.579 Compliance and Enforcement

A. Site Inspections

1. Agents, officials, or other qualified persons authorized by the City of Graham may periodically inspect riparian buffers to ensure compliance with this ordinance.
2. Notice of the right to inspect shall be included in the letter of approval of each variance and buffer authorization.

3. Authority to Enter Property and Conduct Investigations and Inspections. Authorized agents, officials or other qualified persons shall have the authority, upon presentation of proper credentials, to enter and inspect at reasonable times any property, public or private, for the purpose of investigating and inspecting the site of any riparian buffer. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the City of Graham, while that person is inspecting or attempting to inspect a riparian buffer nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out their official duties. The City of Graham shall have the power to conduct such investigations as deemed reasonably necessary to carry out the duties as prescribed in this Ordinance.
4. Notice of Violation
 - a. If it is determined that a person has failed to comply with the requirements of this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. 1A-1, rule 4. In the event service cannot be accomplished by registered or certified mail, it may be accomplished in any manner provided in rule (4) of the North Carolina Rules of Civil Procedure.
 - b. The notice shall specify the violation and inform the person of the actions that need to be taken to comply with this Ordinance, or rules or orders adopted pursuant to this Ordinance. The notice shall direct the person to correct the violation within a specified reasonable time. The notice shall inform the person that any person who violates or fails to act in accordance with any of the provisions of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance is subject to the civil and criminal penalties and other enforcement actions as provided in this Ordinance.

5. Power to Require Statements. The City of Graham shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activities.

B. Civil Penalties

1. Assessment of Penalties. Any person who violates or fails to act in accordance with any of the provisions of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance shall be subject to a civil penalty. A civil penalty for a violation may be assessed in an amount not to exceed ten thousand dollars (\$10,000) per day. If any violation for which a penalty may be assessed is continuous, a civil penalty may be assessed for each day of the violation in an amount not to exceed twenty-five thousand dollars (\$25,000) per day for as long as the violation occurs. Each day of a continuing violation shall constitute a separate violation under Section 10.579(B)(1).
2. Notice of Civil Penalty Assessment. The governing body of the City of Graham shall provide written notice of the civil penalty amount and the basis for the assessment to the person assessed. The notice of civil penalty assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within thirty (30) days after receipt of the notice of assessment by written demand for a hearing.
3. Hearing. A hearing on the civil penalty shall be conducted by the City of Graham City council within 30 days after the date the written demand for the hearing is received by the City of Graham City council. The conducting the hearing shall make its recommendation to the governing body of the City of Graham within 30 days after the date of the hearing.
4. Final Decision. The governing body shall issue a final decision on the civil penalty within 30 days of the recommended decision. A copy of the final decision shall be served on the violator by any means authorized under G.S. 1A-1, Rule 4.
5. Appeal of Final Decision. Appeal from the final decision of the governing body shall be to the Superior Court of the county in which the violation occurred. Any appeal must be filed with thirty days of receipt of the final decision. A copy of the appeal must be served on the (City manager/other appropriate person) by any means authorized under G.S. 1A-1, Rule 4.
6. Demand for Payment of Penalty. An assessment that is not contested is due when the violator is served with a notice of assessment. The civil penalty must be paid within 30 days or the assessment, if not appealed, or within 30 days after the conclusion of the administrative or judicial review of the assessment. If payment is not received within 30 days after demand for payment is made, the City of Graham may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due.
7. Use of Penalties. [Civil penalties collected pursuant to this Ordinance shall be credited to the general fund of the City of Graham as nontax revenue.]

C. Criminal Penalties

1. A violation of the provisions of this Ordinance or a rule or order adopted pursuant to this ordinance shall be punished as provided for in the North Carolina General Statutes for the violation of local ordinances. See, for example, Section 14-4 of the North Carolina General Statutes. Violation may also be punishable under the provisions of Section 143-215.6B of the North Carolina General Statutes.

D. Injunctive Relief

1. Civil Action in Superior Court. Whenever the governing body of the City of Graham has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the City of Graham for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Alamance County.
2. Order to Cease Violation. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

- E. Compliance with Requirements. Any person engaged in new activities as defined by this Ordinance who fails to meet the requirements of this Ordinance shall be deemed in violation of this Ordinance.

Proposed Language:

CHAPTER 10

Chapter 10 of the Code of Ordinances.

Chapter 10 entitled *City of Graham Development Ordinances* is hereby amended as follows:

Sec. 10.43 entitled Penalties.

Subsection entitled **Misdemeanor** is hereby repealed in its entirety. Subsection

entitled **Civil Penalty** is hereby rewritten as follows:

Civil Penalty. Any violation of this ordinance shall subject the offender to a maximum civil penalty of \$100 pursuant to G.S. 160A-175. Each day that any violation continues after receipt of the final written notice of such violation shall constitute a separate violation and a separate civil offense for purposes of the penalties and remedies specified herein. The offender fails to pay the penalty within 10 calendar days of receiving final written notice of violation, the penalty may be recovered by the City in a civil action in the nature of a debt. A civil penalty may not be appealed to the Board of adjustment if the offender received a final written notice of violation and did not appeal to the Board of adjustment within 30 calendar days of receipt of the notice in accordance with Article 4 of G.S. 160D. Failure to accept or receive notice of any decision shall not constitute failure on the part of the City in delivering said notice in a manner consistent with state statute.

Sec. 10.44 entitled Administration, enforcement generally.

Last sentence of said section is amended and rewritten to read as follows:

The Zoning Enforcement Officer (ZEO) shall order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; or the discontinuance of any illegal work being done; and the ZEO shall take any other action authorized by this article or state statute to insure compliance with, or to prevent the violation of, its provisions.

Sec. 10.372 entitled Penalties for Violation.

First sentence of said section is amended to read as follows:

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions, and safeguards established in connection with grants of variance or special exceptions, shall, when permitted by state statute, constitute a Class 1 misdemeanor pursuant to NC G.S. 143-215.58.

Sec. 10.521 entitled Remedies and Penalties.

The remedies and penalties provided for violations of this ordinance shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

Sec. 10.521 (c) is repealed in its entirety.

Sec. 10.579 entitled Compliance and Enforcement.

Subsection A-Site Inspections

(4)- Notice of Violations

(b) is amended to read as follows:

The notice shall inform the person that any person who violates or fails to act in accordance with any of the provisions of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance is subject to the civil penalties and other enforcement actions as provided in this Ordinance.

Sec. 10.579 entitled Compliance and Enforcement. Subsection C-

Criminal Penalties.

This section is hereby repealed in its entirety.

Conformity to The Graham 2035 Comprehensive Plan and Other Adopted Plans

Applicable Planning District Policies and Recommendations

- Not applicable; city-wide.

<p><u>Planning District</u> All</p> <p><u>Development Type</u> All</p>
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Staff Recommendation

Based on *The Graham 2035 Comprehensive Plan*, other jurisdictions, state statutory requirements, and best practices, **staff recommends approval of the text amendments.**

CHAPTER 10

Chapter 10 of the Code of Ordinances.

Chapter 10 entitled City of Graham Development Ordinances is hereby amended as follows:

Sec. 10.43 entitled Penalties.

Subsection entitled **Misdemeanor** is hereby repealed in its entirety.

Subsection entitled **Civil Penalty** is hereby rewritten as follows:

Civil Penalty. Any violation of this ordinance shall subject the offender to a maximum civil penalty of \$100 pursuant to G.S. 160A-175. Each day that any violation continues after receipt of the final written notice of such violation shall constitute a separate violation and a separate civil offense for purposes of the penalties and remedies specified herein. If the offender fails to pay the penalty within 10 calendar days of receiving final written notice of violation, the penalty may be recovered by the City in a civil action in the nature of a debt. A civil penalty may not be appealed to the Board of adjustment if the offender received a final written notice of violation and did not appeal to the Board of adjustment within 30 calendar days of receipt of the notice in accordance with Article 4 of G.S. 160D. Failure to accept or receive notice of any decision shall not constitute failure on the part of the City in delivering said notice in a manner consistent with state statute.

Sec. 10.44 entitled Administration, enforcement generally.

Last sentence of said section is amended and rewritten to read as follows:

The ZEO shall order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; or the discontinuance of any illegal work being done; and the ZEO shall take any other action authorized by this article or state statute to insure compliance with, or to prevent the violation of, its provisions.

Sec. 10.372 entitled Penalties for Violation.

First sentence of said section is amended to read as follows:

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions, and safeguards established in connection with grants of variance or special exceptions, shall, when permitted by state statute, constitute a Class 1 misdemeanor pursuant to NC G.S. 143-215.58.

Sec. 10.521 entitled Remedies and Penalties.

The remedies and penalties provided for violations of this ordinance shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

Sec. 10.521 c) is repealed in its entirety.

Sec. 10.579 entitled Compliance and Enforcement.

Subsection A-Site Inspections

(4)- Notice of Violations

(b) is amended to read as follows:

The notice shall inform the person that any person who violates or fails to act in accordance with any of the provisions of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance is subject to the civil penalties and other enforcement actions as provided in this Ordinance.

Sec. 10.579 entitled Compliance and Enforcement.

Subsection C- Criminal Penalties.

This section is hereby repealed in its entirety.

PREPARING TO IMPLEMENT CRIMINAL JUSTICE REFORM LEGISLATION IN TOWNS AND CITIES

October 2021

Gov. Roy Cooper on September 2, 2021 signed into law a wide-ranging piece of legislation that creates new databases, requires additional background checks and decriminalizes certain local government ordinances. This document is designed to highlight a few provisions in Senate Bill 300 (S.L. 2021-138) Criminal Justice Reform that deserve particular attention from local government attorneys, law enforcement agencies and administrators. Some of the changes may require town councils to adopt or amend ordinances; some provisions may require local governments to create new databases; and other provisions may require that new practices and processes be established. This guidance document highlights the main changes in the legislation. However, this is not legal advice and towns and cities are encouraged to read the entire bill and consult their staff attorneys or contract attorneys to determine the changes they need to implement.

A. DECRIMINALIZATION OF CERTAIN ORDINANCES (PART XIII):


PART XIII of S.L. 2021-138, titled Decriminalization of Certain Ordinances, removes the current presumption that all local ordinances may be enforced criminally (G.S.160A-175) and states that ordinances may be enforced criminally as provided in G.S. 14-4 “only if the city specifies such in the ordinance.” It further states: “Notwithstanding G.S. 160A-75, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.” It also includes a list of statutory sections in which cities cannot adopt ordinances with criminal enforcement. That list of topic areas are as follows: planning and regulation of development; stream clearing programs; regulating businesses and trades; outdoor advertising; solar collectors; cisterns and rain barrels; taxis; setback lines; curb cut regulations and ordinances regulating trees. The legislation specifies that these changes *go into effect Dec. 1, 2021*, so towns and cities have a limited time frame in which to respond to these changes.

To prepare for the change in the law, towns and cities should consider taking the following steps:

- i. Determine if you have ordinances which impose potential criminal penalties.
- ii. Make a list of ordinances for which you wish to retain criminal enforcement authority.
- iii. Check to make sure the list does not include ordinances that fall under the topic areas disallowed by the legislation.
- iv. Check to make sure the ordinance language includes clear criminal authority.
- v. If these ordinances do not have clear criminal authority, have town council adopt a new ordinance or a statement that comprises specific language in the ordinances that state they can be criminally enforced.
- vi. For ordinances that will not be enforced criminally, establish administrative capabilities to issue and collect civil citations or fines for violations and provide for an appeals process. **PRACTITIONER'S TIP:** For arrestable offenses, judicial officials have the authority to obtain personal identification information for an alleged violator. In civil matters, where only a citation or fine can be issued, obtaining the identity of the alleged violator may be difficult or practically impossible.
- vii. If town councils need to, adopt any new ordinances or changes to ordinances by Dec. 1, 2021, the date Part XIII of S.L. 2021-138 goes into effect. **PRACTITIONER'S TIP:** Since the legislation requires the criminal authority to be specified in "the ordinance," towns and cities should carefully specify criminal enforcement in each applicable ordinance.
- viii. Note that ordinances with criminal enforcement authority cannot be adopted in the first meeting that it is introduced.

B. CREATING POLICIES, DATABASES AND FOLLOW UP PLANS

Certain provisions require the creation of processes whereby law enforcement agencies must track specific types of incidents and report those to a statewide database. Practitioners say it is important that once this information is collected, it be properly retained so that confidentiality requirements are maintained, and that law enforcement officers (LEOs) be given the opportunity to challenge their inclusion if required by law. Once the data has been collected, practitioners also recommend that supervisors keep track of these



incidents, perhaps through an automated alert system, and supervisors create Action Plans to help individual officers avoid repeated occurrences. Setting up the database and tracking the data may be required by the new law but acting on the information may be a best practice to avoid being seen as having failed to follow through on early warning signs.

Under this legislation at least three sets of data must be collected:

1. Critical Incident Database – A new statewide database of critical incidents is established by this legislation. Critical incident is defined as “an incident involving any use of force by a law enforcement officer that results in death or serious bodily injury to a person.” The information collected in this database stays confidential. While the legislation requires law enforcement agencies to report “critical incidents,” involving police officers, it also provides the officer a right, prior to being placed in the database, to request a hearing in Superior Court for a determination of “whether the officer’s involvement was properly placed in the database.” Agencies may want to create a process whereby an officer is informed prior to their names being submitted to this database, and the officer be informed of an opportunity to exercise a right to request a hearing in Superior Court. **PRACTITIONER’S TIP:** It should be noted that the right to a hearing is limited to whether the officer’s involvement was properly placed in the database, not the appropriateness of the officer’s actions during the incident. Also, if the incident results in disciplinary action there may also be a need for a name clearing hearing so these two processes may overlap and possibly conflict. **PRACTITIONER’S TIP:** When advising an officer regarding a hearing, consider the risks of the process in the event of future litigation.
2. Early warning system - Every agency that employs law enforcement is required to develop a confidential early warning system for law enforcement including at minimum instances of use of force, discharge of firearm, vehicle collisions and citizen complaints (Part VIII). The system’s essential purpose is to identify possible problem officers, not to collect data. Many small agencies could implement an early warning system manually. But for some agencies, this could be a time-

consuming effort, requiring the creation of a computerized system that collects the information, creates an alert at a particular threshold of reports and ultimately triggers a supervisor to place the officer on a remedial plan. Some system to monitor the data collected and alert a supervisor to repeated offences may be needed to avoid future claims that the agency failed to properly supervise such officers. The “use of force” information to be collected can be individualized to each agency, possibly including instances where handcuffs were placed on an individual and the number of minor vehicle accidents. The data collected under this database stays confidential. This section is effective Dec. 1, 2021 and applies to actions and behaviors on or after that date.

3. Duty to intervene and report excessive use of force

Part XVI of the legislation creates a duty for LEOs to intervene and report an excessive use of force by a LEO. This may require agencies that do not have such a policy to adopt one. In addition, agencies should also create a reporting system like ones for critical incidents and the early warnings system. Agencies that do not evaluate their officers’ use of force open themselves up for negligent retention and supervision claims. Agencies should evaluate the performance of their officers who consistently trigger alerts to determine what measures should be taken to correct any noted deficiencies in the officer’s performance, including but not limited to, education, additional training, and disciplinary action.

C. RETAINING AND USING THE DATA

Even while they collect additional data required by this legislation, personnel departments should remember that G.S. 160A-168 requires personnel data to be kept confidential unless it is exempt under a specific exemption. In particular, consider: “section (c4). Even if considered part of an employee’s personnel file, the following information regarding any sworn law enforcement officer shall not be disclosed: (3) Any identifying information as defined in G.S. 14-113.20.”

D. OTHER PROVISIONS OF INTEREST THAT MAY REQUIRE AGENCIES TO PREPARE PROCESSES INCLUDE THE FOLLOWING:

- Decertification - Part I of the bill creates a public database of LEO certification suspensions and revocations to be established by the N.C. Criminal Justice Education and Training Standards Commission.
- Applicants for law enforcement positions and current law enforcement will be required to provide fingerprints, and agencies will have to submit those to the SBI for a federal and state background check by June 23, 2023. (Part II)
- Applicants for law enforcement positions will have to undergo psychological screening and local governments will have to foot the bill for the screening. (Part VI).
PRACTITIONER'S TIP: Consider the costs of such screenings and include those costs when preparing budget estimates.
- Law enforcement will need to report Giglio notifications in writing to the statewide Criminal Justice Standards Division. Those required to report these letters include the individual LEO, the agency head and a judge that issues the notification. (Part IV)
- Changes to the body cam recording viewing statute (Part XXI): No later than three business days from receipt of the notarized form - provided by the law enforcement agency - requesting immediate disclosure of footage in a case involving death or serious bodily injury, a law enforcement agency shall file a petition in the Superior Court in any county where any portion of the recording was made for issuance of a court order regarding disclosure of the recording. Any person who willfully records any recording disclosed pursuant to this subsection shall be guilty of a Class 1 misdemeanor. Any person who knowingly disseminates a recording disclosed pursuant to this subsection shall be guilty of a Class I felony. **PRACTITIONER'S TIP:** Check to ensure the law enforcement agency has a supply of high-capacity thumb drives where hours of footage can be downloaded for quick transmittal to the Superior Court judge.
- Part X of the legislation now adds the Governor to the list of individuals who may ask the SBI to investigate deaths due to use of force by a law enforcement officer.

The N.C. League of Municipalities thanks the following city attorneys who provided valuable input into creating this document:

Jeffrey C. Sugg, City of Asheboro

Brian Meyer, Town of Apex

Toni Russ, City of Durham

Tiffanie Sneed, Town of Chapel Hill

*In addition, we would like to thank **Fred Baggett** of the Police Chiefs Association for reviewing the document.*

For questions or comments, please contact:

Leo John, Legislative Counsel, N.C. League of Municipalities

ljohn@nclm.org or 919-522-5138

....
SECTION 13.(b) G.S. 160A-175 reads as rewritten:
"§ 160A-175. Enforcement of ordinances.

...
(b) ~~Unless the Council shall otherwise provide,~~ Except for the types of ordinances listed in subsection.(b1) of this section, violation of a city ordinance is~~may be~~ a misdemeanor or infraction as provided by ~~G.S. 14-4.~~ G.S. 14-4 only if the city specifies such in the ordinance. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. Notwithstanding G.S. 160A-75, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.

(b1) No ordinance of the following types may impose a criminal penalty:

- (1) Any ordinance adopted under Article 19 of this Chapter, Planning and Regulation of Development, or its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings.
 - (2) Any ordinance adopted pursuant to G.S. 160A-193.1, Stream-clearing programs.
 - (3) Any ordinance adopted pursuant to G.S. 160A-194, Regulating and licensing businesses, trades, etc.
 - (4) Any ordinance adopted pursuant to G.S. 160A-199, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising.
 - (5) Any ordinance adopted pursuant to G.S. 160A-201, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors.
 - (6) Any ordinance adopted pursuant to G.S. 160A-202, Limitations on regulating cisterns and rain barrels.
 - (7) Any ordinance adopted pursuant to G.S. 160A-304, Regulation of taxis.
 - (8) Any ordinance adopted pursuant to G.S. 160A-306, Building setback lines.
 - (9) Any ordinance adopted pursuant to G.S. 160A-307, Curb cut regulations.
 - (10) Any ordinance regulating trees.
- "

GENERAL

DRAFT

Sec. _____-Violations of this ordinance.

(a) Any persons violating any provision imposed by this ordinance shall be guilty of a Class 3 misdemeanor punishable upon conviction by a fine not exceeding \$500.00 as provided by G.S. 14-4 and otherwise, except as provided in G.S. 14-4, shall be further subject to any one, all or a combination of provisions of N.C.G.S 160A-175.

(b) Each day's continuing violation shall be a separate and distinct offense.

OPERATION OR PARKING OF VEHICLES

DRAFT

Sec. _____ -Violation of this ordinance.

(a) If any person shall violate this ordinance regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than fifty dollars (\$50.00) and otherwise, except as provided in G.S. 14-4, and shall be subject to any one, all or a combination of the provisions of N.C.G.S. 160A-175.

(b) Each day's continuing violation shall be a separate and distinct offense.

INFRACTIONS

DRAFT

Sec. _____ -Violation of this ordinance.

(a) If any person shall violate this ordinance, the person shall be guilty of an infraction punishable by a fine of not more than fifty dollars (\$50.00) and otherwise, except as provided in G.S. 14-4, shall be further subject to any one, all or a combination of the provisions of N.C.G.S. 160A-175.

(b) Each day's continuing violation shall be a separate and distinct offense.



PLANNING BOARD Recommendation & Statement of Consistency

Per NCGS 160D-701, zoning regulations shall be made in accordance with an adopted comprehensive plan and any other officially adopted plan that is applicable. The Planning Board shall advise and comment on whether the proposed amendment is consistent with "The Graham 2035 Comprehensive Plan" and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with "The Graham 2035 Comprehensive Plan" shall not preclude consideration or approval of the proposed amendment by the City Council.

Criminal Penalties (AM2104)

Type of Request
Text Amendment

Meeting Dates
Planning Board on November 16, 2021
City Council on December 14, 2021

- I move to **recommend APPROVAL** of the text amendment as presented.
- I move to **recommend APPROVAL** of the alternative language, as proposed by the Planning Board.
- I move to **recommend DENIAL**.

-
- The amendment is **consistent** with *The Graham 2035 Comprehensive Plan*.
 - The amendment is **not fully consistent** with *The Graham 2035 Comprehensive Plan*.

The action is reasonable and in the public interest for the following reasons:

This report reflects the recommendation of the Planning Board, this the 16th day of November, 2021.

Attest:

Dean Ward, Planning Board Chair

Debbie Jolly, Secretary