

ARTICLE 1.

IN GENERAL

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ARTICLE 1.

IN GENERAL

CHAPTER 18. LAND DEVELOPMENT CODE

Sec. 18-1. Title.

This chapter shall be known as the Land Development Code of the City of Wilmington, North Carolina.

Sec. 18-2. Authority.

(a) The City of Wilmington enacts this chapter pursuant to the authority granted by the General Statutes of North Carolina, including Article 19 of G.S. Chapter 160A, and Article XXIII of the Wilmington City Charter.

(b) Whenever any provision of this chapter refers to or cites a section of the North Carolina General Statutes or the Wilmington City Charter and that section is later amended or superseded, this chapter shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

(c) It is not intended by this chapter to repeal, abrogate, annul or in any way to impair or interfere with any existing provisions of law or ordinance, other than the ordinances superseded by this chapter, or any rules, regulations or permits previously adopted or issued, or which shall be adopted or issued, in conformity with law, relating to the use of buildings or premises, nor is it intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires large yards, courts, or other open spaces than are imposed or required by such existing provisions of law or ordinance or by such rules, regulations or permits, or by such easements, covenants or agreements, the provisions of this chapter shall control.

(d) All suits at law or in equity and/or all prosecutions resulting from violations of any zoning, subdivision, sign, flood plain or other ordinances heretofore in effect, which are now pending in any of the courts of the United States or this state shall not be abated or abandoned by reason of the adoption of this chapter, but shall be prosecuted to their finality the same as if this chapter had not been adopted; any and all violations of the existing ordinances, prosecutions for which have not been instituted, may be hereafter filed and prosecuted pursuant to the terms and provisions of this chapter; and nothing in this chapter shall be construed to abandon, abate or dismiss any litigation or prosecution now pending, and/or which heretofore have been instituted or prosecuted.

(e) To the extent that the provisions of this chapter are the same in substance as the previously adopted provisions that they replace, they shall be considered as continuations thereof and not as new adoptions, enactments or amendments unless otherwise specifically provided. In particular, a situation that did not constitute a lawful, nonconforming situation under the previously adopted zoning ordinance does not achieve lawful nonconforming status under this chapter merely by the repeal of the zoning

ordinance. When provisions of this chapter refer to the date of adoption or effective date, such date shall mean the date of the original adoption or original effective date of the provision or the date the provision became applicable to an area as a result of annexation or other change in jurisdiction of this chapter.

(f) The adoption of this chapter shall not extend the amortization period for any nonconforming situation under any previously adopted provisions.

Sec. 18-3. Jurisdiction.

(a) This chapter shall be effective throughout the corporate limits of the City of Wilmington, North Carolina as now or hereafter fixed.

(b) All of the provisions of articles 4, 5, 6, 8, 9, 11, and 12 of this chapter shall apply to the erection, construction, and use of buildings and land by the State of North Carolina and its political subdivisions. No land owned by the State of North Carolina, however, may be included within a conditional zoning district without approval of the Council of State or its designate.

Sec. 18-4. Purpose.

This chapter is intended to consolidate all of the city's major land development and land use regulations.

The regulations in this chapter are designed to promote efficient traffic circulation; to minimize the risk of fire, panic, and other damages; to protect public health, safety, and the general welfare; to provide adequate light and air; the protection of residential neighborhoods, shopping districts, parks and recreational facilities and natural resources from adverse impacts of inappropriate uses or site development features and to facilitate the adequate provision of transportation, potable water, sanitary sewerage, schools, parks, and other public facilities. The regulations herein represent a reasonable consideration of the character of the city's various neighborhoods and their peculiar suitability for particular uses of land and have been made with a view to preserving the existing environment and maintaining or enhancing the quality of life while assuring the greatest possible use and enjoyment of land on individual properties, balanced against the necessary protection and enjoyment of land uses on adjacent properties, with the objective of promoting and protecting the public welfare through the regulation of land use and land development activities.

Sec. 18-5. Relationship to long-range plans.

It is the intention of the Wilmington City Council that this chapter implement the general planning policies expressed in the Wilmington-New Hanover County CAMA Land Use Plan Update Comprehensive Plan, The Future Land Use Plan, corridor plans, special area plan and other planning documents as adopted by the City Council and as subsequently amended. While the City Council intends that this chapter and any amendment to it shall be in conformity with adopted planning policies, the council hereby expresses its intent that neither this chapter nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

Sec. 18-6. Fees.

(a) Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, special-use permits, subdivision preliminary plan review plat approvals, zoning amendments, tree removal and preservation permits, Future Land Use Plan/Future Land Use Map amendments, site plans, concept plans, historic preservation applications, zoning verifications, traffic impact analysis reviews, landscape plans, street closures, vested rights, annexations, variances and other administrative relief. The amount of the fees charged shall be as set forth in the city's fee schedule.

(b) Fees established in accordance with subsection (a) shall be paid upon submission of a signed application or notice of appeal. The application or notice shall not be complete until the fees are paid. City agencies, however, shall be exempt from the payment of fees under this section.

Sec. 18-7. Computation of time.

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

(b) Unless otherwise specifically provided, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice of paper is served by mail, three (3) days shall be added to the prescribed period.

Sec. 18-8. Public hearing notice.

Whenever a public hearing is required herein to be held by the board of adjustment and City Council in the performance of its powers and duties, notice of the public hearing shall be given once a week for two (2) successive weeks in a newspaper of general circulation in the city prior to the date set for the public hearing. The first publication of such notice shall be made no less than ten (10) days nor more than twenty-five (25) days prior to said hearing. This provision shall not apply to hearings by the historic preservation commission, planning commission, and subdivision review board.

Sec. 18-9. Requirements resulting in a fraction.

Except as otherwise provided by law, when any requirement of this chapter results in a fraction of a unit, a fraction of one-half ($1/2$) or more shall be considered a whole and a fraction of less than one-half ($1/2$) shall be disregarded. Rounding of numbers shall be done after computations are made. For example, in density computations, a three-acre site with an allowable density of four and four-tenths (4.4) units per acre nets thirteen (13) units ($3 \times 4.4 = 13.2$) rather than twelve (12) units ($3 \times 4 = 12$) by rounding the fractions after the computation is made.

Sec. 18-10. Interpretation.

(a) In their interpretation and application, the provisions of this chapter shall be held to be the

minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare.

(b) Only those permitted uses, uses permitted under prescribed conditions, and special uses indicated by the applicable district regulations shall be interpreted to be allowed in such district. No interpretation shall be effective to change the character of a district in comparison with the purpose of such district and the other uses allowed.

Sec. 18-11. Severability.

Should any section or provision of this chapter or any boundary of any district of the official zoning map herein or hereafter adopted be decided by the courts to be unconstitutional or illegal, such decision shall not affect the validity of these regulations and the official zoning map as a whole or any part thereof other than the part so decided to be unconstitutional or illegal.

Sec. 18-12. Effective date.

The provisions of this chapter were adopted on December 14, 2004 and became effective on January 15, 2005.