

## **PART II**

### **CODE OF ORDINANCES**

#### Chapter 1

#### **GENERAL PROVISIONS**

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**Sec. 1-1. How Code designated and cited.**

The ordinances embraced in this and the following chapters and sections shall constitute the "Code of Ordinances, Town of Cary, North Carolina," and may be so cited.

(Code 1976, § 1-1; Code 1982, § 1-1)

**State law reference**—Code of ordinances, G.S. 160A-77.

**Sec. 1-2. Definitions.**

The following definitions and rules of construction shall apply to this Code and to all ordinances unless the context requires otherwise.

*Generally.*

- (1) When provisions conflict, the specific shall prevail over the general and the more stringent provision shall always prevail.
- (2) All provisions shall be liberally construed so that the intent of the town council can be effectuated.
- (3) Words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and words and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings.
- (4) Grammatical errors shall not vitiate, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands.
- (5) Scrivener's errors shall be ignored.

*Charter.* The term "Charter" means the Charter of the Town of Cary, North Carolina, as amended.

*Code.* The term "Code" means the Code of Ordinances, Town of Cary, North Carolina, as designated in section 1-1.

*Computation of time.* In computing any period of time prescribed or allowed by this Code, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included unless it is a Saturday, Sunday or legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

**State law reference**—Similar provisions, G.S. 1A-1(rule 6).

*Conjunctions.* In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows, except that the term "or" may be read "and," and the term "and" may be read "or" if the sense requires it:

- (1) "And" indicates that all the connected terms, conditions, provisions or events apply.

- (2) "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.
- (3) "Either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

*Council or town council.* The terms "town council" and "council" mean the town council of the Town of Cary, North Carolina.

*County.* The term "county" means Wake County, North Carolina or Chatham County, North Carolina, as the case may be.

*Delegation of authority.* Whenever a power is granted to or a duty is imposed upon a public officer or public employee, the power may be exercised or the duty may be performed by a designated deputy of such officer or employee or by a person otherwise duly authorized pursuant to law or ordinance.

*Following.* The term "following" means next after.

*Gender.* Words of one gender include words of all other genders.

*G.S., titled acts.* The abbreviation G.S. refers to the North Carolina General Statutes. Any reference to a state law or state act, whether by act number, location in the North Carolina General Statutes or by short title, is to such law or act, as amended.

*Health officer.* The term "health officer" means the county health director.

*Keeper and proprietor.* The terms "keeper" and "proprietor" include persons, acting by themselves or through a servant, agent or employee.

*May.* The term "may" is to be construed as being permissive.

*May not.* The term "may not" has a prohibitory effect and states a prohibition.

*Month.* The word "month" means a calendar month.

*Must.* The term "must" is to be construed as being mandatory.

*Number.* The singular includes the plural. The plural includes the singular.

*Oath.* The term "oath" includes an affirmation in all cases in which by law an affirmation may be substituted for an oath. In such cases the terms "swear" and "sworn" are equivalent to the terms "affirm" and "affirmed."

*Owner.* The term "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole or of a part of such building or land.

*Person.* The term "person" means any human being, any governmental or political subdivision or public agency, any public or private corporation or limited liability company, any partnership, any firm, association or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing or any other legal entity.

*Personal property.* The term "personal property" includes every species of property except real property, as herein defined.

*Preceding.* The term "preceding" means next before.

*Premises.* The term "premises," as applied to real property, includes land and structures.

*Property.* The term "property" includes real property, personal property and mixed property.

*Real property.* The term "real property" includes lands, tenements and hereditaments.

*Reasonable time, reasonable notice.* In all cases where any provision requires any act to be done in a "reasonable time" or "reasonable notice" to be given to any person, such reasonable time or notice shall mean such time only as may be necessary in the prompt execution of such duty or compliance with such notice.

*Shall.* The term "shall" is to be construed as being mandatory and not permissive.

*Sidewalk.* The term "sidewalk" means any portion of a street between the curblineline and the adjacent property line, intended for the use of pedestrians, excluding parkways.

*Signature or subscription.* The word "signature" or "subscription" includes a mark when the signer or subscriber cannot write.

*State.* The term "state" means the State of North Carolina.

*Street.* The word "street" includes any street, avenue, boulevard, road, alley, lane, viaduct and any other public highway in the town.

*Tenant, occupant.* The terms "tenant" and "occupant," applied to a building or land, include any person holding a written or oral lease of or who occupies, the whole or part of such buildings or land, either alone or with others.

*Tense.* Words used in the past or present tense include the future as well as the past and present.

*Town.* The term "town" means the Town of Cary, North Carolina.

*Town officers, employees, boards, committees, commissions, etc.* References to officers, employees, boards, committees, and commissions, are to town officers, town employees, town boards, town committees, and town commissions.

*Week.* The term "week" shall be construed to mean seven days.

*Written or in writing.* The term "written" or "in writing" include any representation of words, letters or figures, whether by printing or otherwise.

*Year.* The term "year" means a calendar year.

(Code 1976, §§ 1-2(a)(1—32), 1-3, 1-14; Code 1982, §§ 1-2, 1-3, 1-14)

**State law reference**—Statutory construction, G.S. ch. 12.

**Sec. 1-3. Catchlines of sections; history notes; references.**

(a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

(b) The history notes appearing in parentheses after sections of this Code are not intended to have any legal effect, but are merely intended to indicate the source of matter contained in the section.

(c) References and editor's notes following certain sections are inserted as an aid and guide to the reader and are not controlling nor meant to have any legal effect.

(d) Unless stated otherwise, all references to sections or chapters are to sections or chapters of this Code.

(Code 1976, §§ 1-3, 1-5; Code 1982, §§ 1-4(1), 1-5)

**Sec. 1-4. Effect of repeal of ordinances.**

(a) The repeal of an ordinance shall not revive any repealed ordinance.

(b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

(Code 1976, § 1-6; Code 1982, § 1-13)

**State law reference**—Repeal of statute not to affect actions, G.S. 12-2.

**Sec. 1-5. Territorial applicability of Code.**

All ordinances of the town are hereby extended to all real property and rights-of-way belonging to or under the control of the town outside the corporate limits of the town, and shall be in full force and effect therein insofar as they are applicable. Any words in any ordinance indicating that the effect of an ordinance provision is limited to the corporate limits of the town shall be deemed to mean and include also the said outlying real property belonging to or under the control of the town unless the context clearly indicates otherwise.

(Code 1976, § 1-11; Code 1982, § 1-6)

**State law reference**—Ordinances effective on town property outside limits, G.S. 160A-176.

**Sec. 1-6. Altering Code.**

No person shall change or amend, by additions or deletions, any part or portion of this Code, or insert or delete pages or portions thereof, or alter or tamper with such Code in any manner whatsoever except pursuant to ordinance or resolution or other official act of the town council, which will cause the law of the town to be misrepresented.

(Code 1976, § 1-9; Code 1982, § 1-10)

**Sec. 1-7. Amendments to Code; effect of new ordinances; amendatory language.**

(a) All ordinances passed subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion therein.

(b) Amendments to provisions of this Code may be made with the following language: "Section (chapter, article, division or subdivision, as appropriate) of the Code of Ordinances, Town of Cary, North Carolina, is hereby amended to read as follows: . . . ."

(c) If a new section, subdivision, division, article or chapter is to be added to the Code, the following language may be used: "Section (chapter, article, division or subdivision, as appropriate) of the Code of Ordinances, Town of Cary, North Carolina, is hereby created to read as follows: . . . ."

(d) All provisions of this Code desired to repealed should be repealed specially by section, subdivision, division, article or chapter number, as appropriate, or by setting out the repealed provisions in full in the repealing ordinance.

(Code 1976, § 1-11; Code 1982, § 1-8)

**Sec. 1-8. Supplementation of Code.**

(a) By contract or by town personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the town council. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the town council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code, and shall also include all amendments to the charter during the period. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

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

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

- (1) Organize the ordinance material into appropriate organizational units.
- (2) Supply appropriate catchlines, headings and titles for chapters, articles, divisions, subdivisions and sections to be included in the Code and make changes in any such catchlines, headings and titles or in any such catchlines, headings and titles already in the Code.
- (3) Assign appropriate numbers to chapters, articles, divisions, subdivisions and sections to be added to the Code.
- (4) Where necessary to accommodate new material, change existing numbers assigned to chapters, articles, divisions, subdivisions or sections.

- (5) Change the words "this ordinance" or similar words to "this chapter," "this article," "this division," "this subdivision," "this section" or "sections \_\_\_\_\_ to \_\_\_\_\_" (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated in the Code).
- (6) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinances inserted into the Code.

(Code 1982, § 1-12)

**Sec. 1-9. General penalty; continuing violations; enforcement of ordinances.**

(a) In this section "violation of this Code" means any of the following:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense, a violation, an infraction, a civil infraction or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
- (3) Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense, a violation, an infraction, a civil infraction or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.

(b) In this section "violation of this Code" does not include the failure of a town officer or town employee to perform an official duty unless it is specifically provided that the failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code shall be punished by a fine of not more than \$500.00.

(d) Except as otherwise provided by law or ordinance:

- (1) With respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense.
- (2) With respect to other violations, each act constitutes a separate offense.

(e) The procedure provided for in section 6-133 applies to all ordinances; provided that for purposes of a chapter of this Code other than chapter 6, references to animal control officers shall be deemed to be references to persons authorized to enforce the chapter.

(f) The imposition of a penalty does not prevent suspension or revocation of a license, permit or franchise or other administrative sanctions.

(g) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief.



(h) This Code may also be enforced as authorized and in accordance with G.S. 160A-175. Specifically, and without limitation, any section of this Code may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. This Code may be enforced by any one, all, or a combination of the remedies authorized by G.S. 160A-175.

(Code 1976, § 1-10; Code 1982, § 1-7)

**State law reference**—Penalty for ordinance violations, G.S. 14-4, 160A-175.

**Sec. 1-10. Severability of parts of Code.**

It is hereby declared to be the intention of the town council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

(Code 1976, § 1-7; Code 1982, § 1-8)

**Sec. 1-11. Provisions considered as continuation of existing ordinances.**

The provisions of this Code, insofar as they are substantially the same as legislation previously adopted by the town relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

**Sec. 1-12. Code does not affect prior offenses, rights, etc.**

Nothing in this Code or the ordinances adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code.

**Sec. 1-13. Certain ordinances not affected by Code.**

Nothing in this Code or the ordinance adopting this Code affects the validity of any ordinance or portion of an ordinance listed below. All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length herein and are on file in the town clerk's office.

- (1) Annexing territory into the town, excluding territory from the town, or extending or describing the boundaries of the town.
- (2) Promising or guaranteeing the payment of money for the town, or authorizing the issue of any bonds or other instruments of indebtedness.
- (3) Making any appropriation or providing for a budget or budget amendment or budget transfer.
- (4) Any contract, right, agreement, lease, deed or other instrument or obligation assumed by the town.
- (5) Establishing positions, classifying positions, setting salaries or benefits of town officers or town employees not codified in this Code.

- (6) Relating to elections or election districts.
  - (7) Granting any right or franchise.
  - (8) Adopting or amending the comprehensive plan.
  - (9) Accepting or naming any public park or public recreation area.
  - (10) Dedicating, naming, establishing, locating, relocating, opening, paving, widening, repairing or vacating, any street or public way.
  - (11) Establishing and prescribing the street grades of any street.
  - (12) Levying or imposing any special assessment.
  - (13) Dedicating, accepting or vacating any plat or subdivision.
  - (14) Levying or imposing taxes not codified in this Code.
  - (15) Prescribing traffic regulations for specific locations not codified in this Code.
  - (16) Rezoning specific property or amending the zoning map.
  - (17) Adopting, amending or constituting the Land Development Ordinance of the Town of Cary, North Carolina.
  - (18) That is temporary, although general in effect.
  - (19) That is special, although permanent in effect.
  - (20) The purpose of which has been accomplished.
- (Code 1982, § 1-9)

**State law reference**—Authority of town to omit designated classes of ordinances from Code, G.S. 160A-77.

**Sec. 1-14. Standard specifications and details.**

(a) The Town of Cary Standard Specifications and Details (“Specifications”) adopted by the Town Council on January 5, 2017, and as may be amended from time to time, is hereby incorporated by reference into the Code of Ordinances. An official copy of the Specifications shall be kept on file in the office of the Town Clerk.

(b) The purpose of the Specifications is to protect the health, safety, and welfare of Town citizens by regulating construction of infrastructure such that infrastructure is safe, reliable, and consistent throughout Town.

(c) The following types of construction are required to comply with the Specifications:

- (1) Town projects by contractors hired by the Town;

- (2) infrastructure, including but not limited to streets, greenways, and utilities, to be dedicated to or maintained by the Town or another governmental entity;
- (3) private streets that are open to the public; and
- (4) private greenway connections to public greenways.

(d) Any request for a modification to the Specifications must be submitted in writing to the Director of Water Resources or the Director of Transportation and Facilities, as appropriate, with supporting information that justifies the modification.

- (1) The Director of Water Resources, Director of Transportation and Facilities, or an Assistant Town Manager may approve construction drawings which do not conform to the technical standards, technical specifications, or numerical values set forth in the Specifications if the requested modification (i) will not adversely impact public safety or Town infrastructure, and (ii) will maintain the intent and purpose of the Specifications.
- (2) The person requesting the modification may appeal from the decision of the Director or Assistant Manager by filing a written request for appeal with the Town Manager within ten (10) days of the date of the decision, stating with particularity the grounds for the appeal. An appeal hearing shall be scheduled and conducted by the Town Manager or Deputy Town Manager, who shall render a final written decision. Any appeal from the decision of the Manager or Deputy Manager shall be to the Superior Court for Wake or Chatham County, as appropriate, by petition for writ of certiorari filed within thirty (30) days of the date of the decision.

(e) Approval of a modification request does not constitute Town assurance that the requested modification is sufficient or appropriate based on best engineering practices or standard of care.

(f) The Director of Water Resources or the Director of Transportation and Facilities may revise the Specifications from time to time as they deem necessary.  
(Ord. No. 2017-Code-01, 1-5-2017)

## GENERAL PROVISIONS